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Legislative Assembly of Ontario

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Official Report of Debates (Hansard)

Monday 29 August 1994

Journal des débats (Hansard)

Lundi 29 août 1994

**Standing committee on
resources development**



**Comité permanent du
développement des ressources**

**Workers' Compensation and
Occupational Health and Safety
Amendment Act, 1994**

**Loi de 1994 modifiant la Loi
sur les accidents du travail
et la Loi sur la santé
et la sécurité au travail**

Vice-Chair: Mike Cooper
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Monday 29 August 1994

Lundi 29 août 1994

The committee met at 0933 in the Radisson Hotel, London.

WORKERS' COMPENSATION AND
OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL
ET LA LOI SUR LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

The Vice-Chair (Mr Mike Cooper): Good morning, committee, and welcome to London. It's been suggested by the committee members that we do a rotation on questions to the presenters. Unless there are any objections, we'll proceed.

EMPLOYERS' ADVOCACY COUNCIL,
LONDON CHAPTER

The Vice-Chair: I call forward our first presenters, from the Employers' Advocacy Council. Good morning and welcome to the committee. Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you would keep your comments somewhat briefer so that we have time for questions and comments from each of the caucuses. Please identify yourself for the record and then proceed.

Ms Mary Paterson: Good morning. My name is Mary Paterson. I'm the chair of the London chapter of the EAC. With me this morning to my right is Heather Hogan, first vice-chair; to my left is Elaine Carver, policy chair, and to our far left is Stephen Cryne, executive director, who's here today in a technical capacity.

The Employers' Advocacy Council is a non-profit, volunteer organization representing over 1,700 employers across Ontario. Our members include both small and large employers, as well as many public sector employers and employers from schedule 2. In London, we have 168 member firms.

We are extremely disappointed that the government has chosen to compile its own agenda for workers' compensation reform, as opposed to following the accord which both labour and management had agreed to.

It is our view that Bill 165 is only tinkering in a system that is bankrupt. If the Workers' Compensation Board was a private insurance company, it would likely be placed alongside Confederation Life.

Much has been said in the first week of the committee hearings and there have been some issues raised which we feel require clarification. The first is assessment rates. The point has been made that the average assessment rate in 1988 of \$3.02 per \$100 of payroll is lower than the 1994 rate of \$3.01 per \$100 of payroll. This is misleading if it is used to suggest that employers have enjoyed an assessment rate holiday. Reality is somewhat different if the impact of the increased earnings ceiling over the past several years is considered. As illustrated in the following table, the average across all industry has been increased by over 500%, hardly a rate holiday for employers.

Although not all firms are at the maximum levels, the increases experienced at the individual firm levels have been comparatively substantive. It must also be recognized that as the number of higher-paying jobs disappear, the average will drop. The recession has had a major impact on the decline in the average assessment rate over the past several years.

The purpose clause: The purpose clause contained in the accord would not require the WCB adjudicators to consider if the decisions being made were financially responsible, as suggested by some parties. The intent of financial responsibility was to impose accountability across all levels of the system but most specifically on the government, which we believe must have ultimate accountability to determine the scope and the alternatives to the scope of the system; to the board of directors in developing policy direction for the WCB consistent with the act; to the WCAT; and to the management of the WCB who are required to administer the system and implement the decisions and policies of the board of directors. The purpose clause contained in Bill 165 does not reflect that intent.

The provincial body of our organization has already submitted a full presentation on all aspects of concern with the proposed Bill 165. Our local chapter will focus on four issues which we feel to be of critical importance to the employer community and managing workers' compensation in the workplace. These are vocational rehabilitation, re-employment, medical reports and experience rating.

I'd like to call on Elaine to expand on that.

Ms Elaine Carver: Starting with vocational rehabilitation, for the record, employers do want to employ their injured workers. Unfortunately, Bill 165 will not help us achieve this. As set forth in our provincial submission, it is our opinion that the proposals under Bill 165 do little to address the real problems with vocational rehabilitation.

In 1993, the WCB spent \$753 million on rehabilitation for about 26,000 claims. There's widespread concern that rehabilitation is not achieving its objective and is not being provided as efficiently and effectively as possible. Our concerns about the efficacy of the board's programs are confirmed by the large number of programs that are overturned on appeal to the re-employment hearings board.

There is also concern with regard to the reference to vocational rehabilitation in the purposes of the act, section 1, which states: "The purposes of this act are...to provide for rehabilitation services and programs to facilitate the workers' return to work."

This cannot be construed to mean that the WCB's mandate for vocational rehabilitation becomes one of finding the worker employment as opposed to restoring the worker to a state of employability; nor can it be construed to mean that vocational rehabilitation and return to work are the primary focus or centrepiece of the system. The bill should clearly state that the WCB's primary responsibility is to make determinations of entitlement to benefits and services and to provide those services.

We are also concerned that the government has focused its attention on punitive measures rather than providing employers with the tools necessary to create return-to-work opportunities. The introduction of Bill 162 in 1990 created great complexity in the system for all parties, which has impacted on the levels of and effectiveness of services. In our local area, for example, case workers only have two out of five days in which they can be out in the field assisting employers and workers. The remaining time is spent in the office interviewing workers and completing paperwork. The employer does not fit into this picture.

The proposal to include the employer in the development of the workers' vocational plan, subsection 53(2.1), must be more than a paper exercise. It should be a cooperative process involving the worker, the employer and the WCB case worker, with the support of the worker's treating practitioner. The WCB's role must be one of facilitator to both the worker and the employer.

0940

We've heard submissions from worker advocates to this committee that if the employer cannot re-employ the worker, then the employer should not be part of the rehabilitation process. We disagree. It is a reality, even with the best will in the world, that not all workers will return with the accident employer. The employer, who is responsible for the costs of the claim, has a right to participate in the vocational rehabilitation effort.

The penalties proposed in subsection 103(4.1) for non-cooperation with vocational rehabilitation are regressive in our view and should be withdrawn. Employers do cooperate with vocational rehabilitation in good faith.

In contrast, it is our experience that worker cooperation is difficult to achieve. Typically, where there is a return-to-work plan that has been agreed to and the job has been ruled suitable by the case worker, who has seen the job at first hand and arranged for the appropriate functional

abilities evaluations or had the WCB ergonomic specialist assess the job, if the worker does not cooperate and the decision is taken to discontinue benefits, this decision is generally overruled on appeal as the worker shows a new willingness to cooperate. Employers find this process to be extremely frustrating.

To penalize employers for not cooperating with a VR process so fraught with problems is a mistake. The solution is cooperation, not confrontation, which Bill 165 will serve to promote and engender.

Getting into re-employment, in our view the current act provides the WCB with the authority to enforce the re-employment provisions of section 54. Despite our requests for an explanation of why the current act does not provide the WCB with this authority, we have yet to receive a response from the Ministry of Labour. The proposed changes are arbitrary and provide the WCB with an authority which we view to be unnecessary and penalties which are regressive.

Under the proposals of Bill 165, vocational rehabilitation case workers, whose intended objective is to rehabilitate workers, will be expected to enforce the act. As proposed, the case worker will be required to determine whether the employer has fulfilled the re-employment obligation. This is not a proactive solution and will lead to conflict and adversity between employers and the case worker, whose primary focus must be on assisting employers and workers in the return-to-work process. The case worker's time is precious and limited. Imposing this extra burden will be detrimental to the rehabilitation process.

In our view, this government should be focusing its efforts on improving the efficacy of the present vocational rehabilitation programs and processes.

Additionally, Bill 165 does not address the conflicts that exist in the interpretation of the current act, particularly the differing interpretations by the WCAT and the WCB of the re-employment provisions of section 54.

It is proven over and over again that positive reinforcement brings forth positive results and negativity breeds negativity and conflict. This bill will only add to the complexity of the system and introduces more issues over which disagreements and conflicts will naturally arise, something that the PLMAC accord attempted to lessen.

With respect to return to work, if the government is serious about improving the opportunities for return to work, this amendment should require release of the medical information to the employer in all cases without the consent of but with the knowledge of the worker. There is no obligation imposed on the worker to provide the information or consent to its release, yet employers face stiff penalties for not meeting their re-employment obligations and for non-cooperation with WCB rehabilitation programs. Workers should be equally obliged to cooperate in every way. Failure to provide information requested pertaining to the return to work should have negative consequences on the worker.

The proposal suggests that return-to-work information is considered to be confidential medical information. The information pertains to the level of impairment, job

readiness and physical capabilities. How can a statement such as "no lifting greater than 10 pounds" be considered confidential information? How will the employer be invading one's right to privacy when this information will enable a speedy return to work?

Requiring the worker's consent to this information will result in many employers relying upon the WCB to provide the information, which is frustrating enough today. This proposal will only add to the problem. There will be obvious time delays in providing the information, resulting in increased costs as workers remain off work for a longer period of time, when in all likelihood the employer has suitable work available. This so-called confidentiality will prohibit early intervention, which is part of the WCB's vocational rehabilitation mandate.

Overall, this proposal will prolong the return to work, thereby causing a greater financial burden on the employer and the system. Without access to the information necessary to do so, the employer will be unable to safely and expeditiously return an injured worker to work. Requiring the worker's consent only adds to the complexity and bureaucracy of the system and introduces yet one more issue in the system over which disagreements and conflicts will arise.

Experience rating: The current experience rating systems, NEER and CAD-7, promote a positive attitude to safety among employers and encourage the effective early return to work of injured workers. Employers who implement proactive safety practices and provide return-to-work opportunities are rewarded under these programs.

According to the WCB's NEER program study in 1990, it was found that there was "a substantial incremental impact on health and safety" and "a decrease in frequency rates" for those groups participating in the experience rating program relative to those groups not participating. While not all employers are participating in these programs, the programs have been an unqualified success in reducing frequency of accidents by over 30% since 1988 and have impacted on the reduction in duration in short-term claims by almost four weeks, from 16 to 12, in the last few years.

The current systems measure and reward results, which are objective. The proposed amendments to section 103 will, in our view, measure processes, which are subjective, rather than results. This will severely undermine the effectiveness of these programs which have been to date an unqualified success.

It should be noted that approximately 90% of employers in Ontario have WCB assessments of less than \$100,000 per year. Many are small workplaces that will be unable to implement the programs referred to in section 103.1.

We are deeply concerned that the assessment of the programs referred to under section 103 will be delegated to the Workplace Health and Safety Agency to develop accreditation and enforcement and auditing provisions. This institution is viewed as a failure and the source of great controversy in the employer community. Delegating this power to the WHSA will only add to the difficulties that employers have with the agency and will be vigorously resisted.

If we are to continue to have programs that are effective in meeting the primary objectives of accident prevention and re-employment of workers who are accidentally injured, it is critical that the existing programs continue as presently structured, without amendment.

Ms Paterson: In conclusion, Bill 165 does not provide employers with the necessary tools and cooperation required to ensure effective rehabilitation and safe return to work through education and availability of effective resources. On the contrary, the bill imposes more penalties on employers and yet more non-rehabilitative tasks on the case worker.

These are not solutions to the very complex and difficult task that employers face in returning workers to the workplace. Employers need more tools, not more rules.

Political interference in the system has resulted in organizational paralysis and a lack of effective governance and administration of the system. Bill 162, for example, implemented in 1990, has been incredibly complex for the WCB to administer, and its implications are not yet clear. That bill was put into place without full consultation with the employers or with the people administering the act, resulting in chaos and fiscal uncertainty within the system. Bill 165 is not a solution; if introduced, it will only add to the problems.

Based on the foregoing arguments and the main submission of the EAC, we urge this committee to recommend that Bill 165 be withdrawn and to return to the proposals presented to the government by the employer community last November as the basis for further discussions on WCB reform.

Other jurisdictions, faced with far less serious WCB problems, have taken the very difficult but necessary decisive actions to return their systems to financial stability and thus security. The magnitude of Ontario's problem and impact on our economy dictates that similar decisive action, which may prove to be unpopular, be taken to solve the crisis in our workers' compensation system.

Mr Steven Offer (Mississauga North): Thank you for your presentation. Recognizing the shortness of time, I'd like to go right to page 5 of your presentation, which speaks about re-employment, section 10. Your first paragraph speaks to an issue that:

"In our view, the current act provides the WCB with the authority to enforce the re-employment provisions of section 54. Despite our requests for an explanation of why the current act does not provide the WCB with this authority, we have yet to receive a response from the Ministry of Labour."

My question is going to be basically twofold. The first is, could you please expand on what this particular issue means. Secondly, I would like to ask officials from the Ministry of Labour as to whether they can address the very real issues that have been brought forward by the employers' council.

Mr Steve Cryne: I'd like to respond to that, Mr Offer. With regard to the first part of your question, part of the accord said that the employer community was of

the view that section 54 does provide the WCB with sufficient authority to enforce the re-employment obligations. That was stated very clearly in the accord. What was said further in the accord was that if it was found that the WCB did not have sufficient authority to enforce it, then an amendment should be made to the statute.

We've yet to receive an explanation, and I guess this is the response to the second part of your question, from the Ministry of Labour as to why it feels the current statute, as worded, does not provide the WCB with that authority.

0950

Mr Offer: Well, then, as per the second question, let us use this opportunity to inquire from the ministry officials as to the particular point brought forward by this presentation.

The Vice-Chair: The ministry will provide that?

Ms Sharon Murdock (Sudbury): We will.

Mr Offer: We're not getting it now?

The Vice-Chair: Okay, thank you. Mrs Witmer.

Mrs Elizabeth Witmer (Waterloo North): Thank you very much for your presentation. I think it's excellent, and it's obvious that those of you who are involved with the system probably know it as well as anybody else: I think you've accurately demonstrated that this bill before us today simply increases the bureaucracy. It's very complex, it's very confrontational and it really doesn't achieve the primary purpose of accident prevention and getting the worker back to work.

You've indicated you would prefer that the government give you the tools to do that job, to get that worker back to work as quickly as possible and to help with the rehabilitation. What does this bill not do that you would have liked to see within the context of the bill?

Ms Paterson: I guess from an employer's perspective we're looking at being given or told what to do as opposed to being involved in the process from day one. Unfortunately, some of the experiences and problems that interfere with return to work are delays in decision-making which result in an inability to obtain the information that you need. Again, getting back to medical confidentiality, often you experience a tug of war between what information can be obtained from a physician and what you as an employer have for return to work even on a short-term basis or a progressive basis.

What we'd like to see is a little more, I guess, confidence in the employer on the board's side and through legislation from the government that we can, as an employer, work with the worker, the doctor and the board in trying to start from day one of the injury. One of those tools would be just providing some of that medical information regarding some progressive return-to-work plan, not something that would start four, six, maybe even sometimes eight weeks after an injury, something which normally will tell us—we as employers sometimes have access to a consultation or medical consultant—this person should be back within two weeks, and yet three months down the line we still don't know why this person is off, only that the physician is telling us that the person is off.

We'd like to see something more in terms of medical information from the board, perhaps even assistance in the way of not having to wait for a decision but maybe getting involved from day one. I think the way the bill is written right now doesn't provide for that.

Mr Paul Klopp (Huron): Thank you for your presentation and those comments you made right now. I think we can agree, at least I can agree with those. They seem to make sense to me also.

At the beginning here it says that the government should have listened to the accord with both labour and management, and then at the very end of the report it says you wish the government would take this bill and withdraw it and then go back to the employer community, that the government should listen to "the employer community group last November as the basis for further discussions." Are these one and the same thing, the labour-management accord and then at the end here, when you say we should scrap this and go "to the proposals presented to the government by the employer community" groups "last November"?

Mr Cryne: No, they're not, Mr Klopp. They're entirely different documents. The accord that was struck between labour and management in March of this year was presented—

Mr Klopp: March? Okay.

Mr Cryne: It was presented in March of this year to the government as a consensus document. We're of the view that Bill 165 does not reflect that consensus and therefore it does not have status. We're referring you back to the proposals that the employer community made to the government as the basis for substantive reform to the system.

Mr Klopp: What are the differences between the accord that labour and management made and—

Mr Cryne: There are a number of issues that could not be resolved, as you know, in the accord. I believe the committee does have a copy of the proposal which we presented to the Premier. It was submitted by the business steering committee on the first day of your hearings last week. That was a very comprehensive program which, in our view, would have put the system well back on track and would have provided for improved rehabilitation; it would have improved service delivery; it would have brought the system back on to the secure financial footing which we believe is necessary for the future, not just for the benefit of employers but for workers as well.

The Vice-Chair: On behalf of this committee, I'd like to thank the Employers' Advocacy Council for its presentation this morning.

Mr Offer: Just on a point of order: When ministry officials respond to the question that's been brought forward by the employers' council, how is it going to receive that response?

Ms Murdock: As we've done in previous committees, during the presentations made by presenters. It's their time. The ministry provides most of its answers, that I have seen in other committees and I presume in this one, in writing to the clerk of the committee and the clerk submits it to all members of the committee.

LONDON AND DISTRICT LABOUR COUNCIL

Mr Jim Ashton: First of all, let me welcome the committee to London. Thank you for the opportunity. In particular, let me thank David Winninger, who's to my left sometimes, and as always to my right, Dianne Cunningham, one of the members of your committee.

Interjection.

Mr Ashton: That's true. I see they've got it straight this time.

My name is Jim Ashton. I'm president of the London and District Labour Council and the Canadian Auto Workers union. To my right is Gil Warren, who's executive of the labour council as well as a member of the machinists' union.

Before the brief is started, I would just like to indicate that we recognize the time constraints and we know we're not going to be able to touch on the wide number of issues that are included in Bill 165. We'll attempt to touch on some of them. At the end, before we get into questions, we'd like to take a couple of minutes to add to the brief.

Mr Gil Warren: Good morning. Jim and I are here today to express our views about Bill 165, amendments to the Workers' Compensation Act. Today we're speaking on behalf of the more than 20,000 London and area workers who are members of the labour council. We will address specific aspects of Bill 165 in a few minutes. Our total presentation will take about eight minutes. But first of all we would like to put this bill within the broader political context.

Once again, workers and the labour movement are defending another long-established right, financial security if injured on the job, from yet another attack by the corporate sector. For 15 years, working people around the world have suffered as a result of the policies of Thatcher, Reagan and their like.

Everybody seems to think alike today: the business sector, the political sector, the media. A corporate mentality pervades society. "There is no alternative to what is happening" is the idea. We are here today to say that there are alternatives and there is opposition to a corporate agenda that, in essence, is nothing more than a crude attempt to transfer wealth and power from working people to the corporations.

How is the business campaign against workers' compensation going? Quite well so far, but we are going to do our best to turn that perception around. We cite as an example of the business campaign some of the coverage of these hearings. Last week, on Tuesday, August 23, CFPL-AM radio London, in its 8 am broadcast, said, "Labour Minister Bob Mackenzie defended legislation to cope with massive debt problems at WCB."

Here we see the corporate agenda at work. The very powerful media sector has absorbed the business propaganda line that WCB is "in debt." Reality is distorted, meanings are twisted, definitions become unclear and language debased. WCB is not in debt. Unfunded liability does not equal debt. The WCB has in fact a \$6-billion surplus. We in the labour council find this aspect of the corporate campaign especially galling. There is an amaz-

ing parallel here with the whole issue of "government debt" and the need to "cut back on social spending."

1000

First of all, the corporate sector creates a policy influencing government thinking that corporations should not pay very much tax. Then the idea is put forward that massive unemployment is a good idea to control inflation. Governments begin to run short of cash in a self-induced depression and suddenly the corporate sector says, "Cut social planning," rather than raising their taxes and fighting for full employment. The same thing has happened in WCB. Unfunded liability is simply a prediction that some WCB responsibilities 20 years from now may not be payable if WCB stops today and there are no more contributions. It is not current debt.

The business sector in the past argued that it supported unfunded liability because it did not want large amounts of cash tied up at the present to pay for future obligations that could be dealt with in a pay-as-you-go manner. Business during the last 10 years has changed its attitude. Unfunded liability has become "debt" at the same time that business has pressured government to reduce premiums. The simplest and fairest way to deal with unfunded liability is to collect more money, not cut benefits. We feel that the ultimate corporate objective is to slash WCB benefits and to privatize WCB. This is totally unacceptable to working people.

The unfunded liability situation at WCB has actually improved in the last 10 years. The liability, when expressed as a funding ratio of assets to liabilities, has gone from 32% to 37%, and future predictions predict a ratio with 55% by the year 2014. Unfunded liability is common practice in the private insurance business and we would like to see some comparisons, but unfortunately much of that information is not public. We also note that some critics of WCB accounting practices feel that WCB is including too many non-pension obligations in its definition of unfunded liability and therefore inflating the liability.

Bill 165 tries to use the Friedland formula to reduce cost-of-living pension benefits to many workers. We do not endorse this idea. Friedland was designed for retirement pensions where the long-term effects of inflation are much less than the case of a disability pension applied to a worker who is only 20 or 30 years old. Especially unacceptable is the 4% cap on inflation protection if inflation is high. This government, when it brought in new rent control legislation, felt the need to protect landlords from high inflation. Poor injured workers expect the same treatment. Eliminate the 4% cap.

A comment on subsection 1(0.1), which is the purpose clause of this bill. We support the present wording. The fundamental purpose of WCB is to provide a service to injured workers. While good financial management is a priority, it does not supersede the objective of service. The solution to keeping WCB financially viable is to increase premiums and reduce the number of new claims by focusing on health and safety, accident prevention, worker rehabilitation and a return to pre-accident employers. Vast amounts of administrative moneys could be saved if we had a universal government-owned

disability insurance program as soon as possible. It would also cut down on the bureaucracy.

We would like at this point to examine how the government of Ontario got to this particular point in the very difficult negotiations to bring in changes to WCB. The Ontario Federation of Labour and labour members at a Premier's advisory committee made very significant compromises to long-standing policies to come to an agreement. Injured worker groups and many of the unions that belong to our labour council have opposed these concessions as going too far.

The improvements in this bill to vocational rehabilitation, re-employment and pension supplements must be retained. The business community must not be appeased by this government with further unnecessary concessions. In fact, improvements that are pro-injured worker must be made in a number of areas in this bill if there is to be any hope for greater labour support. Subsection 8(7.1) of this bill is designed to prevent a worker from drawing WCB from two provinces over the same injury. We support this idea but are concerned that the present-day wording could result in other benefits, such as Canada Pension or private disability insurance, being cut off. Also, a small-percentage pension from one jurisdiction for a total disability that was caused by working in two jurisdictions over many years should not preclude a larger-percentage pension from the jurisdiction where the greater part of the injury occurred. An example of this would be a construction worker with a repetitive strain injury who worked in two provinces.

Sections 51 and 63 deal with a physician providing medical information to employers. We feel that this information should be provided only when the employer has implemented a board-approved return-to-work program. Even so, we are very concerned that in non-union situations injured workers may feel coerced into agreeing to provide information. Great care must be taken in implementing this section to prevent employers' access to medical information being used against injured workers.

We support the general spirit of section 53 amendments to force mandatory participation by employers in vocational rehabilitation. We do not feel that employers should be allowed to interfere in vocational rehabilitation if the employer is uncooperative—subsection 53(10). We also feel that subsection 53(13) should be changed so that assistance to the worker can be extended for six months at the discretion of the board and not the employer.

Subsection 54(11.1) and subsection 103(4.1) deal with re-employment and granting new powers to WCB to investigate non-compliance by an employer. We support this section. Employers who are presently fulfilling their re-employment obligations are currently at a disadvantage to non-compliant firms. A mandatory provision will address this problem.

An area of great concern within the labour movement is the relationship of the Workers' Compensation Appeals Tribunal to WCB. The route of appeal to WCAT decisions is the court system. The current section 93 allows the Workers' Comp Board of directors to attack WCAT decisions. Section 93 must be deleted to allow WCAT

independence. Pensions for disabled workers who are over 70 years old and did not return to work after injury should also be included in the \$200-a-month pension increase—section 147. We support the provisions in this bill to increase benefits by \$200 a month for those workers entitled to a subsection 147(4) supplement.

On the issue of experience rating, we support the spirit of this bill in clauses 103.1(2)(a)(b)(c) and (d), where an attempt will be made to assess the employers' willingness to promote health and safety, industrial hygiene and first aid. We are concerned, however, that the process of enforcement will become bureaucratic and ineffective. The official Ontario Federation of Labour convention policy on this issue is to push for a flat-rate assessment policy.

The London and District Labour Council would like to repeat its position that WCB should be extended to all workers in Ontario. The British Columbia New Democratic government extended coverage last year and it should be done here as well. Currently, 700,000 Ontario workers are denied WCB. Increased revenues would also help to deal with unfunded liability problems.

In conclusion, there are parts of this bill that we support and parts that must be changed. There can be no further concessions to business. Re-employment and vocational rehabilitation sections must be strengthened in order to gain wider labour acceptance.

By focusing on non-existent debt, the priority of coverage to injured workers is displaced. This is a disservice to injured workers. If the objective is to meet the needs of injured workers, the priority should be re-employment and prevention. A great advantage to this focus is that it also is the best way to control costs.

Thank you for taking the time to come to London and hear our perspective on Bill 165. Brother Ashton, as full-time president of Local 27, Canadian Auto Workers, deals extensively with WCB problems among his members. I also have helped advocate for injured workers dealing with WCB. We would welcome questions at this point and we'd be happy to relate some of the problems individual workers have had in dealing with the present WCB system.

First of all, Jim would like to make a couple of comments and then we'll be happy to deal with questions.

Mr Ashton: I think it's all right if we go ahead with the questions, given the time that we seem to have left. So I'll leave that.

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Mrs Witmer: Thank you very much for your presentation. I appreciate your concern for the workers you represent. However, I do find your presentation somewhat confrontational. It seems to be indicative of the bill that we have before us.

You fail to recognize that the unfunded liability is a very serious situation. It was first acknowledged in the 1993 annual report that the Provincial Auditor put forward, where he said that plans must be developed to attack the unfunded liability as quickly and effectively as possible. Again, I would just remind you that the consequences of not dealing with the unfunded liability could

have an impact on the province by reducing its ability to access the debt market.

So it is a very serious problem. We only have to take a look at what happened to Confederation Life to know that we need to get our financial house in order, because if we don't, there simply will not be money available to pay injured workers in the future, and we're all concerned about the injured worker. The benefits won't be there. So I'm surprised that you don't have any concern whatsoever.

You talk about the fact that experience rating is not something you fully support and you're pleased with the change the government's made. Are you not aware of the fact that the accident rate and the frequency have all decreased? Why would you not want to continue to support experience rating as presently in place? It's helped the injured worker get back to work more quickly. It's reduced the number of accidents.

Mr Ashton: That I guess sounds good, but in reality that is not the practice. I mean, I deal with the board and with injured workers. I also sit on what is called the regional evaluation centre in London, which attempts to get injured workers back to work and evaluate them as to what they can do. That isn't the reality of what's happening out there.

The problems are that, for starters, we have a system that doesn't adjudicate injured workers for at least 12 to 16 weeks, if they're lucky. So now we have workers sitting out there four months, and particularly with musculoskeletal and RSI injuries we see a long and delayed problem in terms of getting people there. If and when we get some kind of decision from the board, then we end up nine times out of 10 having to go to a hearing, for example, on the whole question of suitability.

You talk about employers cooperating. I guess that's where I have the problem. There are some who do. Unfortunately, most see this bill as a way to sidestep their responsibilities, quite frankly, and to slash and burn, as they've done with UI and other things.

The reality is, I have handled probably 10 appeals on suitability to hearings levels. My vice-president, who also handles them, has done about the same number. We have yet to lose one. We haven't lost one yet, which tells me something about what is wrong with the system. We are waiting too long, we're taking too much time, we are not getting the cooperation.

I would use Windsor as an example in my union, which negotiated an agreement with Local 444, with the Chrysler Corp. Over the last four years, they have reduced their experience costs by almost 50% because they worked with the union, they worked with the workers, they attempted to change ergonomically the jobs where there were problems. They had somebody full time from the union there to assist those workers, to get them back to work as soon as possible. It has made major savings, but it seems to me the direction you seem to be advocating is that we go back to the old way of doing things. The old way, which is the way it is now, is not working.

As for the unfunded liability, you're making the

presumption that somehow the WCB is going to close and fold up its doors and go away tomorrow and we've got all this funding out there. If I had a \$100,000 mortgage and \$37,000 in the bank, I think I'd feel quite comfortable. I think most people would feel quite comfortable. I think the way we have to deal with the problem is to get people back to work earlier, to be treated properly earlier, to get the proper medical attention earlier and to get the claims adjudicated much quicker.

Mrs Witmer: Well, that's exactly what the employer community is looking for.

Ms Murdock: Thank you for the presentation. I just have two quick areas I wanted to ask about. The 4% cap that you mention on page 3: Since 1980 it has never gone beyond 4% except twice, so the 4% cap in reality—I'm wondering why you would feel to eliminate it would resolve much of the issues.

The second part of it is in terms of the medical reporting. I know there's been a lot of mixup just on the basis of how people have been commenting upon the medical report under Bill 165. They're comparing it as equal to the present system of medical reports under the existing legislation and that this would be in cases of early return to work, early intervention within 45 days kind of thing, and there would be a group of health care givers and workers, employers and the board who would set up a form that would strictly set out the restrictions and the capabilities of the worker in regard to the particular return-to-work position or modified work program. I'm wondering how you feel about that, based on what's in your presentation.

Mr Warren: I'll just respond to that. The thing about the 4% cap is, yes, we have low inflation right now, but there's no guarantee that high inflation won't return. I mean, it was built into the Rent Control Act; it's built into many things. If inflation goes up, the assessments the WCB gets will go up. Those assessments are adjusted for inflation, so we don't see why, if WCB's revenue is inflation-adjusted, the benefits are not going to be inflation-adjusted for high inflation. It's just prudent as a government to plan for all scenarios, including a high inflation one. To say, "It's not high right now so we don't have to worry about it," I don't think that's a solution.

In terms of the medical reporting, we're concerned that you could have a large employer with 2,000 workers or something like that that is participating in return-to-work programs and vocational rehab and is asking for medical information and is getting it, and things are working out for 99 of those employees, but there's one employee there who maybe can't come back to work for over a year, like, the medical prognosis is it's going to be at least a year before that person can come back to work. If the employer gets hold of information like that, they may go for a non-punitive discharge. They may fire that employee because he just can't be back to work within the next year, and might get away with it. So that's a concern, that if that information gets to an employer it will be used maybe not against all the workers who are on WCB but some of them that the employer has picked out that for totally different reasons they want to dis-

charge. It could be because they're a union activist or anything else. So there's a concern there. Just on the—

The Vice-Chair: That's it. Mr Offer.

Mr Offer: Thank you for your presentation. I want to touch on two areas and I'd like to get your thoughts on this. I believe the unfunded liability is important in so far as affordability is concerned and in so far as the evolution of workers' compensation is concerned. So I believe it's important both to the employers and to the workers in this province. However we want to cut it, we've heard different estimations as to how the unfunded liability is growing, maybe \$1 million, \$2 million, \$3 million a day. That would mean that from this day to when these committee hearings began a week ago, the unfunded liability will have increased by something in the area of \$7 million to \$21 million.

In terms of your concerns about issues around comparing it to debt, I think there's a lot of discussion that has to take place in that area, but employers are, as part of their assessment, paying a portion towards unfunded liability. So your analogy is interesting, but employers are indeed paying a portion. So I'd like to get your thoughts basically on why we should not do anything with respect to unfunded liability or indeed not be concerned.

The second issue I want to talk about is your eloquent argument around the Friedland formula and how it's going to be hurtful to the injured workers in this province. The question that I have is, if the government refuses to move off of the changes that are found in Bill 165, in other words, if the government continues to push forward with the Friedland formula, should this bill be supported?

Mr Warren: I'll just quickly respond to that. Let me quote from our brief again, because you guys missed it, "While good financial management is a priority...." We didn't say, "Don't worry about unfunded liability," we said, "While good financial management is a priority," the top priority is servicing injured workers. We're concerned that WCB be run in a responsible manner. We're not saying it's not a concern. But we're saying that there's a solution, and one of those could be to raise premiums. That's the concept nobody wants to talk about, all right? Corporate profits are up, the corporations are prospering, but let's not talk about raising premiums.

In terms of the Friedland formula, there's a concern there that if you're a worker who's 64, it's not going to impact them very much, but if you're 20 and you're looking at a long-term pension, it will. So it's quite a concern to us.

Just to return to the experience rating question, what we're saying is, we have an existing experience rating program in place. We support this bill that it be expanded to include whether employers are participating in re-employment and other things.

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The problem is, the chamber of commerce comes up with statistics saying that the experience rating system is working, but we see a process where workers are in a situation—

Mr Offer: I'll just cut in—

Mr Warren: But this is an important thing to respond to.

Mr Offer: Are you going to provide an answer to my question as to whether we should support the bill if the government refuses to take away the Friedland formula?

The Vice-Chair: Excuse me, Mr Offer, but there is no more time for a response. I might remind the committee members that if they want responses, they're going to have to keep their questions more brief and concise. On behalf of this committee, I'd like to thank the London and District Labour Council for their presentation this morning.

Mr Randy R. Hope (Chatham-Kent): Mr Chair, while we wait for the next presenters to come forward before the committee, on page 3 of their brief that was just presented to us dealing with the unfunded liability as a common practice in private insurance business, I'm wondering if through legislative research it's possible to obtain this comparator that has been brought forward in this presentation, if there's a way we can get information which gives us some information that was made reference to on page 3 of the presentation that was just before us.

BREWERY, GENERAL AND PROFESSIONAL WORKERS' UNION

The Vice-Chair: I call our next presenters, from the Brewery, General and Professional Workers' Union. Good morning and welcome to the committee. Please identify yourself for the record and then proceed.

Mr Ron Blain: Yes. Good morning. My name is Ron Blain. I'm the president of the brewery workers' union, Local 1.

Mr George Redmond: I'm George Redmond. I'm the business agent for the Brewery, General and Professional Workers' Union in the London area. Mr Blain is going to give our presentation this morning.

Mr Blain: Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act: We would like to thank the committee for this opportunity to bring forward the views and concerns of the members of the Brewery, General and Professional Workers' Union in the London area with respect to Bill 165. We would also like to commend the government for proceeding with what we feel are progressive changes in workers' compensation in a number of areas with Bill 165. However, saying that, we are also concerned at some of the limitations in some of those changes and feel some are too regressive, particularly in areas such as reducing indexing. We will address those concerns in more detail later.

Realizing that increasing costs in workers' compensation and health and safety need to be addressed, we commend the government for recognizing the need for some change now and further examination of the compensation system through a royal commission. Significant change is occurring in our economy not only in how we work but in what sectors of the economy we work in. The trend towards service sector jobs, 60% of new jobs created in London in 1993, and particularly part-time work, 55% of new jobs created—see appendix C—seem to be the most prevalent type of new employment. We

must find ways to ensure all workers have access to compensation. Some of the major issues a compensation system must look to with a royal commission should include such issues as coverage, because of the changing trends in employment, the development of a universal disability plan and reducing the adversarial roles created with workers' compensation. Causation should not be the issue; compensation should be.

Many feel this opportunity should be to simply trim costs through reduced benefits. We, on the other hand, embrace the opportunity to improve the system for all stakeholders, both employers and workers, to make jobs safer and reduce the overall cost of the system. This can be accomplished not simply by cutting back benefit levels but by decreasing the need for them. We do not want short-sighted solutions for poorly-thought-out or rash goals.

Instead of reducing benefit levels, we need to look at ways to make the system work better. There is a disturbing trend in the lack of re-employment post-Bill 162, where 78% of workers who are out of work for one year or more remain unemployed. These workers are eligible for FEL awards when they are not returned to work, as you can see from the projections in appendix B, the single largest cost to the workers' compensation system.

In accounting and financial terms, we talk about costs with terms like "big bucket items" or refer to "tall chimneys" on graphs. It is simple common sense to address your most expensive issue when you are trying to cut cost out of the business. There is no doubt that the "big bucket items" and "tall chimneys" of the workers' compensation system are FEL awards.

There are only two meaningful and real ways to address these cost issues, and that is to either return an individual to comparable earnings, within 10% of pre-injury earnings, with the pre-accident employer or to have successful vocation rehabilitation so any FEL award is minimized or not required. We must stress we are talking real jobs or job offers here, not phantom jobs the board deems available. We're talking about real jobs with real income.

If we look at the FEL projection in appendix B, "Assuming Reduction of FEL Benefits by 1%," you see a reduction of 1% creates a saving of \$417.2 million. If we reduced FELs by 10%, that savings becomes \$4.172 billion. Returning injured workers to meaningful, comparable work not only reduces costs but maintains the intent of the Workers' Compensation Board.

The second prong of the "big bucket issues" is that of addressing how the board recognizes employer efforts to reduce WCB costs through experience rating. The concept is an admirable one, but it's also a problematic one. The current system does lead to underreporting of accidents, failure of employers to register, unnecessary appeals and a general lack of improving the workplace practices unless a specific and normally short-term cost savings can be attributed to it. The current system of experience rating does little or nothing to reward efforts to improve good health and safety practices. It may sound silly, but it rewards luck, not effort, in achieving a good accident record.

Subsection 103.1(1) of Bill 165 addresses the lack of direction in the current experience rating programs. Instead of only looking at the issue of cost, it begins to implement the fundamental underpinnings of experience rating, whether a large or small employer: good health and safety practices, vocational rehabilitation programs and actual return-to-work programs. These changes will focus real cost savings in workers' compensation ratings costs short term and reduce systemic costs that run through the entire workman's compensation system long term.

Although not suggesting a model return-to-work program, we would like to give you a concrete example of what a return-to-work program can actually do.

A return-to-work program was developed at Labatt's London in cooperation with management and implemented in 1992. The impact, I think you will agree, has been dramatic. The numbers we will be talking about are for the calendar year ending in 1993.

In the area of weekly indemnity, WI, the average claim length was 25 to 30 days. After implementation of the return-to-work program, the average WI claim length was reduced to 12 days, a 40% reduction in duration. It is the first time ever that Labatt's London has been under Confederation Life's average claim length for the manufacturing sector.

WCB claim length has a similar success story. Average length of claims have gone from 30 to 32 days in duration to 25 to 26 days in duration. That number is even better than it looks. Long-term claims, those injured prior to Bill 162 with no return-to-work obligation, are included in the length of the claim. Using a worst-case scenario, we are looking at a 19% reduction in WCB claim length.

As you can see, not only will the changes produce significant reduction in compensation costs, the savings flow through the insurance side of the business to produce a remarkable benefit for employers and dignity for injured workers.

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These savings tend to produce a synergistic effect on the workplace. As more accommodations take place, the benefits of those accommodations often extend to other workers in their place of employment. By way of example in the brewing industry, when we install lift tables for pallets, this not only allows an injured worker with a back disability to return to work because they don't have to bend over to lift cartons up; it also reduces potential new claims. Other workers now benefit from the improved method of lifting and we avoid future workers' compensation claims.

These lift tables have been available for years. Until we had an obligation to return injured workers to work with accommodation, Bill 162, we didn't get them because there was no immediate cost saving. It doesn't go on today's bottom line for profits; it goes on tomorrow's. Section 103.1 will lend needed assistance to ensure we capture these long-term savings.

Prior to Bill 162, many injured workers faced a dim prospect of finding employment if they had a significant

impairment and the board felt vocational rehabilitation was unwarranted. Companies acted independently to return someone to work, with no obligation to re-employ. Over 400,000 pre-Bill 162 workers with permanent disabilities and no vocational rehabilitation remained unemployed after their injuries.

Bill 165 tries to address this with the old act pension increases of \$200 if someone is eligible for subsection 147(4) supplements. We can appreciate the concern for increased costs, but I think you have to view this in a humanitarian light. Many of these injured workers are required to go on social assistance to survive. Work injuries created the initial need for these pensions. It should be workmen's compensation that bears the cost of the injury, not the social assistance system. WCB should recognize the hardship faced by injured workers. A \$200 increase is a beginning towards that end and a recognition by the public of where the onus should lie.

We would like to take this opportunity to address some of our concerns with Bill 165. We will attempt to be brief here and will only touch on our other concerns. Please refer to appendix A for more detail.

Section 3, amending section 8 with the addition of subsection (7.1), is unclear as to what may happen to an aggravation or deterioration of a previous condition. Will it eliminate private insurance?

We have concerns with section 8, amending section 51. There need to be safeguards on employers who don't have a real return-to-work program and are only accessing medical information to thwart a return to work.

Section 9(10) should include the worker's representative in the development of a vocational rehabilitation program for a return-to-work program.

Section 10, amending subsection 54(11.1)—"the board may determine"—is a significant move in the right direction. Whether in a unionized or a non-unionized atmosphere, returning to work can be a very complex process and expertise can be of immense benefit.

Section 11, amending section 56, is a major move in the right direction. The stakeholders will be responsible for the overall operation of the board.

Section 17, amending subsection 65.2(1), goes hand in hand with section 56. This will ensure that the board continues to operate within its mandate and gives it the necessary procedures to continue to look at its role as it reviews the memorandum of understanding.

Section 21, amending section 72.1, adding mediation, will hopefully reduce the need for section 53 appeals and help the system work more quickly.

Section 27, amending section 103, will put some teeth into vocational rehabilitation.

Section 33, amending subsection 148(1), reducing indexing, is uncalled for and extremely regressive. Recognizing that this was the tradeoff for reaching an agreement with the employer members of the Premier's Labour-Management Advisory Committee, we feel it is too steep a price to pay. The 4% cap on inflation has to be removed at the very least. The Friedland formula has a built-in 25% savings without a cap.

We would like to thank the committee for the oppor-

tunity to share our perspective on Bill 165. If you have any questions regarding our brief, we'd be more than happy to answer them at this time.

Ms Murdock: The Friedland formula has a built-in 25% savings without a cap, so the \$18 billion over 20 years that has been projected on it under the present way it is formulated—what are you saying? Are you saying 75% of that or are you saying 25%?

Mr Redmond: No, we're suggesting that because it's three quarters of whatever inflation is, it already has a built-in CPI savings of 25%. It doesn't need to be capped at 4%, nor for that matter have a reduction of 1%, to keep it that low.

Ms Murdock: On page 6, subsection 9(10) should include the worker's rep in the development of a work rehab program for RTW, what happens to the worker who doesn't have a rep and how do you work that out?

Mr Redmond: Obviously that's why we talked earlier about the needed expertise that the board has in terms of doing that. But in many workplaces, like the one Ron comes from in Labatt's, where it was a jointly developed program, the union or the worker representative is integral to that reinstatement process. They sit down together with the worker and with the board and with the employer to do it. I think if we change or amend the act to reflect that those programs should be recognized, we should also include in them places of employment that already have good programs and make sure that representation continues, so that the integrity of the return-to-work program is consistent.

Mr Offer: Based on your concerns around the Friedland formula, if the government refuses to change that, should the bill be supported?

Mr Redmond: As we said, our general intent is that we think there are some significant improvements and that there needs to be some change now. There's also the royal commission that will be there to look at and reflect in greater detail on more complex issues and, I suppose, have a second opportunity to review anything that isn't changed here.

We would still lend our support to it, but we think that particular portion of the act is regressive and doesn't need to be there. Reiterating what the previous presenter talked about in terms of this, in pension plans we're looking at short-term—I mean, the actuaries talk in terms of the die-off rate. It's exactly what the pension indexing is designed for; it lasts for seven to 12 years in that area, if you look at the mortality tables.

The Friedland formula is going to impact injured workers' pensions, it could be, for 25 or 35 years, and the impact is just staggering. It doesn't need to be there in terms of long-term savings, because the 25% savings is built in and will reflect on the unfunded liability.

Mrs Witmer: I appreciate your presentation. I think we all agree that something needs to be done as far as the amount of the FEL award is concerned. It's certainly contributing to a rise of costs within the system.

You talked about the experience rating. We all know that accidents have gone down approximately 30% since 1988, yet the costs of the system have increased 50%.

But you go on to say here that the system "does little or nothing to reward efforts to improve good health and safety practices." Then you go on to talk about the return-to-work program at Labatt's, which actually demonstrates otherwise. I guess we've heard from other employers that really there has been an incentive there for management and the employees to sit down together to ensure that the workplace is made more safe. So how can you say this on the one hand and then indicate it's not working on the other hand?

Mr Redmond: Because if we look at the overall number of return-to-work programs, there are some large employers who have addressed the issue and it works well; we've seen that. But many employers who don't have the background, the expertise or the timing to implement this need assistance in how that's going to be done. Changing the legislation to strengthen return-to-work principles in the act will give the board some of that and it can lend that assistance.

In terms of the Employers' Advocacy Council, we heard of 117,000 employers; there are not 117,000 return-to-work programs in this province, and there need to be. The only way of doing that is by instituting it in the legislation.

The Vice-Chair: On behalf of this committee, I'd like to thank the Brewery, General and Professional Workers' Union for its presentation this morning.

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NOVACOR CHEMICALS (CANADA) LTD

Ms Kathy Suslje: Good morning. I'm Kathy Suslje with Novacor Chemicals and with me is Yugo Ivanovich, who looks after our safety, health, environment and responsible care programs at Novacor's Corunna site.

Ladies and gentlemen, we are very pleased to have this opportunity to provide Novacor's input to Bill 165. For your information, Novacor Chemicals, which is a subsidiary of Canadian-owned Nova Corp, is a major petrochemicals and plastics company. Our Ontario facilities include an integrated refinery and petrochemical complex in Corunna, a polyethylene resins plant in Corunna and another one in Mooretown, a styrene plant in Sarnia, an administrative/business centre in Sarnia, a plastics research centre in Mississauga and a sales office in Mississauga. The company's Ontario-based production facilities generate annual revenues of over \$1 billion and provide direct employment for about 1,300 Ontarians.

The company is part of the chemical industry, which is a key player in the provincial economy. It is the third-largest sector in Ontario in terms of shipments, the second in terms of value added, the sixth in terms of employment, the fourth in terms of compensation, a significant exporter and a leader in workplace safety.

Novacor's employment practices encourage the maintenance of a safe working environment and our employees have achieved many notable safety records. For example, our St Clair River site has had only two lost-time cases in 35 years of operation, with a total lost time of eight days. Our Corunna site was the first petrochemical complex in the world to receive the international safety rating system's prestigious five-star

advanced rating, which is based on a thorough audit of management systems.

In addition, in 1993 our Corunna employees achieved one million safe working hours for the 11th time and in 1992 two million safe working hours for the third time. Our Moore site went five years without a lost-day case and achieved over 2.5 million safe working hours, which is quite an achievement given the small size of Moore's workforce. Our Sarnia site has accumulated two years without a lost-time accident.

Our good safety performance is also reflected in the performance of other industries that work with us. For example, the construction industry in the Sarnia area has one of the lowest frequency rates in the country.

The strong emphasis that has been placed on safety in our company has resulted in low rates of injury and human suffering and, therefore, relatively low assessment rates for workers' compensation. We are concerned that changes proposed in Bill 165 have the potential to add significant costs to companies like Novacor that have done the right things and have excellent safety performance. The two areas that concern us are experience rating and financial sustainability.

Experience rating: The amendments concerning experience rating in Bill 165 open the door to subsequent regulations that could undermine the importance of safety results in determining sectoral rate structures for workers' compensation and refunds under the NEER program.

Currently, companies are grouped into sectoral categories with their rate assessments based on the safety performance experienced by their sector. Consequently, companies in industries with good safety performance can be assessed significantly less than the average assessment rate for workers' compensation and companies in sectors with less enviable safety results can find themselves paying significantly more.

If Bill 165 allows the emphasis to be shifted from proven safety results to simply having programs in place in determining sectoral rate structures, then it is conceivable that all employers would move towards paying a uniform rate for workers' compensation. Movement away from rate structures based on performance will do nothing to reduce the frequency and severity of workplace injuries, will mean that poorly performing employers will not be financially accountable for their accident performance and will add over \$1 million in additional costs to a responsible company such as Novacor. This may well impact our future investment decisions in the province. Novacor strongly believes that good safety performance should continue to be recognized in the rate structure for workers' compensation and that we should not be forced to pay for the poor performance of others.

The amendments to experience rating in Bill 165 could affect the NEER program in much the same manner. Currently, a company with a good safety record relative to the average of its industry rate group will get a refund on its initial assessment. Those with a poor record relative to the average pay a surcharge. Moving away from a program based on proven results to the one that may be even partially based on the existence of internal programs, regardless of how efficient those programs may

be, introduces a very subjective assessment methodology with little direct relation to reducing injuries. Once again, companies with good safety results may find that their costs significantly increase. According to the WCB, NEER encourages employers to invest in workplace safety and participate actively in vocational rehabilitation programs. Therefore, there appears to be no rationale for the changes that have been proposed.

We have heard from some in government that the changes proposed in Bill 165 regarding experience rating were agreed to by the members of the Premier's Labour-Management Advisory Committee, or PLMAC. However, what appears in Bill 165 is not what was reported back to business by the employer caucus of PLMAC. It was explained to us that the intent of the PLMAC accord was to essentially leave experience rating as it is and to augment it by adding an additional incentive for employers that involved the encouragement of return to work. Therefore, Bill 165 does not match employers' understanding of the PLMAC accord.

In summary then, experience rating helps promote a fairer distribution of the cost of the workers' compensation system and acts as a financial incentive for companies to reduce injuries. It should not be undermined.

Financial sustainability: The second area we would like to address is the importance of having a workers' compensation system in the province that is competitive and financially sustainable.

Currently, the average assessment rate in Ontario is higher than in other jurisdictions where Novacor operates, as is the unfunded liability. The phrase "financial crisis" has been used by many to describe the workers' compensation system in the province. It was rumoured that the reason the Premier originally asked PLMAC to review the workers' compensation system was because he was concerned the province's credit rating might be impacted by the unfunded liability. Despite this, Bill 165 does not adequately recognize and deal with the issue of competitiveness and financial sustainability of the workers' compensation system.

It is our understanding that members of PLMAC negotiated for the introduction of a balanced purpose clause in the accord. However, the purpose clause in Bill 165 is not balanced. It deals only with the need to provide fair compensation and return-to-work opportunities with no mention of the need for financial responsibility and economic evaluation of proposed changes. It is our belief that the concepts of competitiveness and financial sustainability should be reflected in the purpose clause if we want to encourage the development of a healthy system that is able to continue to meet employees' needs and that is not in conflict with attracting investment to the province.

Novacor supports reform initiatives that would ensure a competitive and financially sustainable workers' compensation system. We commend the government for introducing changes to the indexation of benefits, as recommended by the employer community, which could have a significant long-term impact on the system by substantially reducing the unfunded liability. However, the indexing exemptions and benefit improvements

contained in Bill 165 will mean that the unfunded liability of the system will actually increase by several billion dollars over the next 20 years. Therefore, Bill 165 has not adequately dealt with the need for financial sustainability.

In summary, the costs of a workers' compensation system should be competitive with those in other jurisdictions. If they are not, then the location with the higher cost could be viewed less favourably in investment decisions involving new and sustaining capital. Workers' compensation systems also need to be financially sustainable. We believe it is unacceptable to allow unfunded liabilities to grow. Such deficits will not only increase the annual cost of a system, making rates less competitive, but could also negatively impact on a jurisdiction's credit rating and a company's cost of capital.

Conclusions: In conclusion, Novacor is strongly committed to ensuring a safe working environment, and we are very proud of the many outstanding safety records that our employees have achieved. Safety is a priority consideration in all planning activities.

While we support having good management systems in place in companies and investing in safety, the real goal and the only measure of success is not injuring workers. Good safety performance is also very important in helping to control overall workers' compensation costs. Movement away from assessments based on performance will do nothing to reduce workplace injuries or the growing unfunded liability and will mean that poorly performing companies will not be financially accountable for their accident performance.

Companies such as Novacor are currently planning for new investments. Ontario has many advantages as a place to invest, such as proximity to markets, availability of raw materials, skilled workers and a developed infrastructure. However, Novacor is concerned that Bill 165 has the potential, through subsequent regulation, to seriously impact our global competitiveness in the province. If performance-based experience rating is significantly altered and our costs significantly increase, then it is going to get increasingly difficult to attract some of this new investment to Ontario.

We thank you for the opportunity to share our concerns on experience rating and financial sustainability, and are hopeful that you will take our comments into consideration in revamping Bill 165.

The Acting Chair (Mr Paul Klopp): Thank you. There's two minutes for each caucus, starting with Mr Offer.

Mr Offer: Thank you very much for your presentation. You've dealt with an issue, the experience rating, which has been brought forward in this committee a great many times. I'd like to ask you a question based on that particular topic, because the amendments as proposed by the government are moving away from results-based to something else, and I think a lot of people make the assumption that if there are fewer accidents in the workplace, if the result of that—I'm wondering if you can share with us what you believe the impact of that will be to a company such as yours.

Ms Suslje: As I suggested, we do have a very good safety performance, both within our industry and within the company, so we benefit both from our structural category as well as our NEER refund. Right now we benefit from experience rating, and the workers benefit because there are very few injuries.

We have a financial incentive to reduce injuries on the basis of the way the system is set up right now. If the system is changed and we move away from proven safety results into just having programs and practices in place, regardless of how effective those programs may be, we believe we're going to see a movement towards a more uniform rate in the province. What will basically happen is that good performing companies who do not use much money at all from the workers' compensation system will be paying for those companies who draw a lot more on that system. Basically, we will be paying for the poor performance of others. Based on our calculations, that could add millions of dollars to our costs.

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Mr Offer: So your concern is that the good will subsidize the bad, and not necessarily make things better.

Ms Suslje: I don't see how it could make them any better. There will be no financial incentive for the bad performers to improve their safety performance.

Mrs Witmer: Thank you very much for your presentation. I appreciate the thoroughness of the presentation regarding experience rating and the financial sustainability of the system.

I'd just like to follow further along the path that my colleague spoke to. It's obvious that you have a safety record of which you can be extremely proud, and we've heard from other companies as well that as a result of the incentives available, they are working actively with their employees to reduce the accident rate and they are participating actively in the vocational rehabilitation programs.

However, I saw something at the end of your presentation that would indicate to me that if some changes were made as far as removing the incentive and if there was an increase in the assessment rate, a company such as yours that was looking at new investment obviously wouldn't find this province quite as attractive as it had been in the past. Do you believe that either your company or others might be influenced to invest elsewhere?

Ms Suslje: If you're looking at adding over a million dollars to your costs in Ontario by changes through Bill 165, then definitely that would have to be taken into account in any investment decision.

Mrs Witmer: Is that a real figure for your company as a result of these changes?

Ms Suslje: Yes, it is.

Mr Yugo Ivanovich: May I add a couple of things on your question, please? Our assessment rate now is \$1.12 per \$100 payroll. Averages around \$3—if we are going to uniform approach system, therefore it would be three times higher. Our assessment for one site is \$400,000. You're talking a \$1.2-million assessment for one location. The highest level of dollars we used from the WCB payout for us was \$22,000 in one year. Our normal

payment is anywhere between \$2,000 and \$3,000 a year. Our average compensable case is 1.2 over a 15-year period. Therefore, you can appreciate very much that we invested upfront money not to have compensation cases. Being penalized by the proposed changes, why would we invest even further and why would we invest in the province of Ontario?

Mrs Witmer: So it could cost jobs.

The Acting Chair: Thank you very much for that clarification.

Ms Murdock: You're to be commended on your St Clair River site. Only two lost-time accidents totalling eight days over that many years is exceptional. I know that in my riding, Inco has instituted very strong return-to-work, health and safety programs, joint health and safety committees that work together very well, and it has reduced their accident rate too.

But I'm following through on the other two because if you've seen the amendment that has been put forward, there was a lot of consternation in Bill 165 on the language as to the lack of clarity in terms of losing NEER. We recognized that, we saw that as a problem, and put in the amendment using the language out of the PLMAC agreement.

So I think you're overstating the concern, and I know that it's your interpretation and my interpretation and we're probably going to agree to be different. But when I read that "The amount of a refund or surcharge under a program shall be determined by the board based on the work injury frequency of an employer, the accident cost of the employer or both," which is exactly the way it is now—okay? No change. Agreed?

Ms Suslje: Right.

Ms Murdock: Okay. And sub (3), "The amount of a refund or surcharge may be varied by the board upon consideration of,"—and this is exact language out of the PLMAC agreement, "(a) the health and safety practices and other programs of the employer to reduce injuries and occupational diseases; (b) vocational rehabilitation practices and programs of the employer; (c) practices and programs of the employer to assist workers to return to work, or (d) such other matters as the board considers appropriate."

Now, any one of those or a combination of all of them, I don't see how—and you're going to have to teach me here—that would hurt anybody who's already doing it.

Ms Suslje: I think the problem is there's no bounce there. It doesn't say how much is going to be determined by the actual performance of a company and how much is going to be determined by the programs and practices in place. There's nothing there. Is it 10%, the way it is now, and 90% based on programs and practices, or what is the bounce? I think the risk is still there, the concern is still there for companies like us, because we really don't know how it's going to be assessed based on that wording, and it could change. Every company probably has a program in place, whether it's effective or not. The result is what really counts.

Ms Murdock: Well, no. I wish that was true, but it's not. That's the unfortunate part of it, that not every

company in Ontario does have programs in place.

The Acting Chair: Any more comments?

Mr Ivanovich: One comment to answer the last question. What we are frankly afraid of is another involvement of the Workplace Health and Safety Agency into bureaucracy and developing another auditing system away from people working together at the workplace. A typical example is the certification program and sector-specific certification. The record is not very good.

Adding additional bureaucracy in programs, assessments by outside parties, this is what we are really concerned about, and we don't need more bureaucracy.

The Acting Chair: We'd like to thank, on behalf of the committee, Novacor Chemicals for being here today. Your comments are noted and will help us in our decisions. Thank you very much.

Mr Hope: Mr Chair, just a question of legislative research. The document you presented to us which talked about re-employment/VR and there's 2,506 cases of objection there, that 95% of them have been won by workers and 4.9% by employers, about dealing with the return-to-work issues and stuff like that: That's how many appeals have been lodged, 2,506 of them, in the information you provided for us? This morning I heard the labour council talking about how employers talk about their vocational rehabilitation and re-employment and aren't proactive in it, and then I've heard about employers saying how good they are, and then I look at the numbers you presented to us this morning. I just want clarification on those numbers.

Mr Jerry Richmond: Mr Hope, those figures are for the most recent calendar year for which the board had figures, 1993. In my understanding, and I can certainly clarify it with them, they reflect whether the administrative objections or appeals were initiated by workers or employers. That's what they show. And they show consistently that the vast majority of those cases, in all three categories, were initiated by workers. Is that clear?

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Mr Hope: Yes.

The Vice-Chair: Mr Hope, in the future, being as you have a penchant for going to legislative research, could you possibly wait until the end of the morning or afternoon session to ask these questions? Thank you.

Mr Hope: I've got to do it while it's on my mind.

Interjection: Make a note to yourself.

WORKERS' (REPETITIVE) INJURY SUPPORT TEAM

Ms Susan Attoe: My name is Susan Attoe. I'm the president of the Workers' (Repetitive) Injury Support Team. We are a member organization of the Ontario Network of Injured Workers Groups. To my left is Karl Crevar, the president of the Ontario Network of Injured Workers Groups, who will be helping me with the questions.

Regretfully, we are unable to accept Bill 165 as written. In 1911, the CMA, Canadian Manufacturers' Association, appointed a special committee headed by F. W. Wegenast to investigate compensation and represent the CMA before the Meredith commission of June 30,

1910, and the Ontario government. Slowly the business community began to see the advantages of a compensation system. This special committee reported, "If we can eliminate the ambulance-chasing lawyers and dividend collector of liability insurance then we shall have conserved to a very large extent the interest of employers."

Employers noted that legislation would rid the employers of a harassing feature of lawsuits and litigation. It would regulate costs against the company, freeing them from sudden large payouts of money to meet claims.

Of all the advantages that the employers would benefit from, the most important was the reduction in costs. An insurance agent gave testimony: "If a compensation act were enacted giving reasonable benefits to the workman that are clearly defined, having reasonable limitations and making it alternative if he forfeits his right to compensation there would be a great reduction in the cost and no hardship to the workmen."

Ironically, though, various royal commissions, the poverty report, and the 1987 task force report *An Injury to One is an Injury to All* attempted to bring the low benefits and poor treatment of workers who are injured to the attention of the government and the public. The United Nations Year of Disabled Persons in 1981, and the period 1983 to 1992, the Decade of Disabled Persons, had major changes occur which were detrimental to disabled workers.

Bill 162 was passed in 1989 and took effect January 2, 1990. We have had three years to live with this change in the Workers' Compensation Act and have had time to analyse what is happening in the ways of policy and reform to a certain degree, keeping in mind that some policies still need to be developed.

There appears to be a reduction in benefit levels to the workers. The introduction of the non-economic loss award and future economic loss award has been a nightmare to workers trying to meet financial obligations. The NEL and FEL are quickly becoming known as "NEL and FEL, the twins from hell." Workers have been receiving deductions not only from the legislation, but also from board policy. For example, the NEL was reduced by the board introducing a new rating schedule for pensions, the AMA guide.

Deeming was not addressed in Bill 165—sections 43(3)(b) and 43(7)—and this has been a big problem with workers. The FEL subjects workers to reductions by attempting to measure income potential. This is a job that the board feels they can perform and should be working in. This is not an actual job. Benefits should be an actual representation of the disabled person's work record: a group discriminated against in society, so much so that potential employers need legislation and special incentive programs to return them to work.

It is important to note that the first FEL reviews are showing a further reduction in benefits by subjecting workers to phantom promotions. When you are promoted, you usually receive a pay increase and therefore you are potentially earning more. This promoted earning potential is used to reduce the FEL. If this happens at both the 24-month review and then the 60-month review, the person

won't have a FEL. Too bad this is not an actual job. The FEL is also having Canada pension disability fully deducted in some cases. This results in double taxation to workers' incomes.

Workers do not pay into the accident fund, as it was recognized that the worker was already the major contributor and should not be made to make an additional monetary contribution. For example, if a worker is unable to do his or her job and subsequently only earns 50% less than before the accident, the worker has contributed 50% of his or her income. Despite this, the worker's benefits have been attacked over and over by past governments and the board. It is time to stop the attack on workers' benefits and look for other areas to save money for the future success and viability of workers' compensation. There are many areas for us to choose from, the best being accident prevention and maximum employment.

In regard to maximum employment, you will hear in some of the presentations that workers are being brought back. We would like to remind you that modified work programs are only meant to be temporary. Some employers let these programs drag on past the worker's re-employment obligations, only to turn around after the obligation is finished to say: "We can no longer accommodate your permanent restrictions. You have to be able to do all the jobs on the team on a full-time basis."

This new problem appears to be developing from the new management technique called team concept or lean production. Not enough workers are being brought back on long-time, purposeful jobs. We appreciate any legislation which will help workers obtain jobs. To date, neither the Human Rights Code nor the Workers' Compensation Act can force employers to take injured workers back. In regard to Bill 165, it would definitely help if we had wording that forced the employer to take the worker back. Also in regard to number 9, we would like to see the paragraphs of legislation separate what is for the worker, section 53, and what is for the employer, section 54.

The \$200 increase is applied to a supplement. This makes it conditional, and this is unacceptable. We feel this increase should be applied to the pension amount. The objective is to assist older workers who are living in poverty with additional moneys to improve their living conditions. Not all older workers will be receiving this money. I have attached a special letter for your reference. At the very least, it should not be limited based on age. These older workers have been waiting and fighting for this increase and are now being excluded based on their age. These are the same workers whose incomes showed the need for the increase.

In regard to the proposed change number 33, the introduction of the Friedland formula, workers' compensation payments are designed to replace workers' wages during an accident and for the time that the person is unable to work. COLA, or cost of living, increases are to keep wages in line with inflation. Workers who are injured have not chosen to retire, and in this sense they do not need a pension. They need a wage replacement. We fought 11 years to receive full indexing and are not about to give it up. The proposed Friedland formula is

totally unacceptable and should not apply to workers' compensation payments. The Friedland formula was designed to apply to a worker saving for retirement and does not apply to this situation at all. This will only serve to widen the gap between a worker's wages and income, that little bit of income that is left after the worker receives his or her phantom job. If this is allowed, then it should be accompanied with a definition of "maximum amount" and/or "maximum benefits."

In regard to the new board of directors, we believe the bipartite board is the way to go. We would appreciate being able to reaffirm the position of the Ontario Network of Injured Workers Groups. Injured workers are the largest segment affected by the act by far. It should not be unreasonable to confirm our position and even extend it to two positions. With the old board resigning, we still have not been able to confirm our new replacement. For this reason, we are very fearful of not having a position at all.

The privacy act currently preserves the confidentiality of our medical records. To allow change number 8 will create a loophole in the access into one's confidential records. There is no need for this section given the existing cooperation between the worker and the compensation board in the maintenance and sharing of medical information regarding the worker's accident. The only possible reason for this is to give an unfair advantage to the employer. At the very least it should read "informed consent."

These are only part of our concerns. Attached is a more detailed outline.

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Mrs Witmer: Thank you very much for your presentation. It's obvious, after listening to the presentations last week and now again today that certainly the injured workers have been unjustly treated in the past, and certainly some of them are living in poverty and have suffered a great deal.

You've indicated here that you must have wording that would require employers to re-employ workers who are injured. What if there was no position available within that particular workplace? How would that be handled? What exactly is it that you're suggesting?

Ms Attoe: Often there are many cases, I know of five within my group just from the last month, where the workers can specifically point out a job they can do at their place of employment and they are not being allowed back due to the team concept. There should be some way to mitigate that, either through the mediation process or through the board themselves; some way to force them to look at that and say, "Can this worker do that and can they have this job?"

Mr Karl Crevar: I'd like to maybe comment a little bit on that. I think the whole purpose is to ensure that the employer has the obligation to re-employ injured workers. What we're saying is, if you want to address the unfunded liability concerns of the employers, that is one way to do it. Number one, reduce the accidents; number two, bring people back. It hasn't worked in the past. Employers have not, to any great extent, re-employed

injured workers. If you want to address the concerns of employers, bring the workers back and, if it need be, it has to be put in through legislation.

When we talk about the concerns raised by the employer community, I find it somewhat disturbing when we're talking about a cooperative method on this legislation, yet I find it very upsetting to hear that the employers on three occasions walked away from the PLMAC agreements. It's necessary that we clear the air on that issue. If workers are to get back to work, the employers must be obligated through legislation to re-employ.

Mrs Witmer: And you're saying it would have to be with the original employer?

Mr Crevar: Not necessarily. There are provisions that if the worker cannot return to the accident employer, there must be—the voc rehab programs must be supplied by the Workers' Compensation Board so that a worker can achieve sustainable employment, so they can get back to work. That's what we're talking about if you want to talk about saving costs. The workers have to get back to work.

Mrs Witmer: The other question I have is that you've asked for a position on the bipartite board. Why would you not be part of the worker side of that board? We've got the employer community, we've got the worker community, the labour union community, whatever you want to call it, why would injured workers not be included with the labour side of the board?

Mr Crevar: I don't know whether you're aware, we did have an injured worker representative from the Ontario network on the board of directors.

Mrs Witmer: Yes, that's right.

Mr Crevar: As a result of the introduction of Bill 165, there's a transition team that's been set up, so the board has been disbanded, to our knowledge. We went through a process of renominating a replacement for our representative whose term was up and who indicated that he did not want to return. It has not been confirmed at this time whether our replacement is going to be on this new board of directors or whether it is not. I remind you, as Susan had outlined to you, the injured workers are the ones paying the price for any legislation. Any negative legislation, the injured workers will pay the ultimate price. They are the ones who are going to be directly affected by any decisions.

Mrs Witmer: Does labour not recognize you then as being members of their group?

Mr Crevar: Excuse me?

Mrs Witmer: Are you not recognized by the labour unions that have half of the representation? Why would they not include you within their numbers?

Mr Crevar: What I'm trying to explain to you—to date, because of the transition, we're not sure. The labour unions—we have worked very closely with labour in this community because they are also stakeholders. They represent organized labour. We represent a lot of people who are unorganized who have come to us. There are a lot. We have worked with labour to establish that link. We're fighting for the same thing. We're not—

The Vice-Chair: Thank you. Mr Ferguson.

Mr Will Ferguson (Kitchener): Thank you very much. It was an excellent presentation. I want to tell you that we are now in the second week of hearings and last week the government was accused by virtually every employer that appeared before the committee that this bill was not balanced. I'm a little puzzled by that, because it seems when I listen to your comments, as well as other people's this morning, they're not entirely happy with it, so it certainly is less than one-sided.

To my question: The government's position at this point is pretty clear. Of course, we're on the road and we're listening to all kinds of suggestions on how to improve the bill, but I want to ask you this: The Liberal Party, in its report Back to the Future, supports the government's initiative on the Friedland formula. However, they've also suggested in their report Back to the Future that we ought to be freezing premiums for employers immediately.

The Conservatives have taken a much different tack in their report released to the government. I remember last week they suggested that we're not going far enough, that we ought to take the benefit level immediately from 90% of net wages to 80%, that we ought to be imposing a 72-hour waiting period from the time an accident happens until benefits commence and, as well, look at an implementation of some type of copayment schedule, where employees would contribute, as well as employers. I'm wondering if you have any thoughts on those suggestions that have been advanced to the government.

Mr Crevar: Let me get to your first point on the freezing of benefits; it's been indicated very clearly by Mr Mahoney and the Liberal Party and also Conservatives. We're well aware of that. Let me state quite clearly: In its present form, the Ontario Network of Injured Workers' Groups will not support the use of the Friedland formula to reduce benefits. This is one thing we will not support.

When we talk about in reality the freezing of assessment rates, who is going to pay? Are we truly looking at ways of reducing the concerns of the employer? The reality is that when you talk about freezing assessment rates, what you're talking about is venturing into cutting benefits. That's what you're doing. That misconception should be put aside. That's a reality. When you freeze assessment rates for the employers—what you're talking about—the only other alternative to address the employers' concerns on the unfunded liability is through a reduction in benefits.

Injured workers have paid the price for years, and that is reflected in the \$200 increase that they're being given now. They paid the price for years, and what are we talking about? Further cutting into the reduction of benefits. That is not acceptable.

Mr Offer: Thank you for your presentation. I want to be very clear as to your position. If the government refuses to move on the Friedland formula as put forward in the bill, it is your position that the bill should be withdrawn.

Ms Attoe: Yes, we are. We absolutely cannot support

any reduction in benefits. I find it very hard to go to the people I represent and tell them we're going to accept this when I've got five suicide calls a year in regard to workers on compensation not being able to manage the system, and the frustrations they face.

Mr Offer: It is interesting that your very clear and precise position, which I understand full well, is very much the position of the employers who have come before the committee but for different reasons. I want to talk about your position on the board of directors and I want you to help me out on this because, under the legislation, the Workers' Compensation Act, you now do not have a legislated position on the board; rather, you were appointed to an available position. I'm wondering if you are looking for changes which would give you a legislated position, as opposed to one which is available if the opportunity arises.

Ms Attoe: Yes, we would very much appreciate a legislated position. That way, the injured workers—you'll have three groups at the table, more or less. You'll have your labour getting going and your employers getting going, making the compromise, and the workers will be guaranteed to be there to say, "Whoa, this is how it is going to affect us," and keeping them in balance.

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Mr Offer: From your experience, again under the Workers' Compensation Act as presently written, a member of the workers appeal tribunal from WCAT was a member of the board—albeit not a voting member—and is now no longer a member under the proposed changes. Is there a benefit of having representation at the board level from a member of the appeals tribunal?

Mr Crevar: If I may, I ask you the same question in return, Mr Offer. We know that on the previous board of directors we had representatives from particularly the insurance company or the banking institution. We couldn't understand why an employer group that is not covered under compensation would be represented on the Workers' Compensation Board of directors.

Let me go back to your first question on the position by the network in injured workers in this province. I can assure you, and I want to make it very clear, we are opposed to the legislation in its present form. Employers are opposed to the legislation, period, because it does not go far enough in terms of addressing their concerns on the unfunded liability.

Our concerns are much different than the employers'. We hope that by presenting to you, and that by you listening to us, you will take the appropriate steps to correct some of the wrong. We've indicated to you and to the government that there are provisions in the act that we support and we will support, but there are other areas, such as the Friedland formula, which we will not.

The Vice-Chair: Thank you for the presentation.

UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL 459

Ms Erna Moynahan: I'm Erna Moynahan, United Food and Commercial Workers, and this is Mr Jim Jewell, an injured worker who'll be sharing my time with me today.

On behalf of United Food and Commercial Workers, Local 459, I would like to thank the standing committee for the opportunity to address our concerns regarding Bill 165.

I would like to begin by congratulating the NDP government for proposing changes to the Workers' Compensation Act. Over the years we have seen many of our members lose their jobs, their homes, their families and their dignity because of some of the shortcomings of the Workers' Compensation Act. We are delighted that this government is apprised of those shortcomings and is taking steps to eliminate them through reform.

At Local 459, we represent companies such as the H.J. Heinz Co, Omstead Foods Ltd and Primo Foods Ltd. The vast majority of our workforce consists of older and/or ethnic workers with few transferable skills and limited education. We fully support our UFCW's national position, as well as the OFL's position on this reform and the recommendations for proposed changes, as stated in their submissions.

I therefore have not dealt with each individual change in this submission, but a selection of those. As you are aware, many of the proposed amendments were intended to strengthen the employers' obligation to return injured workers to work. We have therefore focused on these amendments, as well as the pension increase.

As we are limited for time, I will not be addressing those changes before you today, but encourage each committee member to fully review all of the information contained in this submission and use it to strengthen the existing language, as proposed in the reform.

In the time that remains, I invite you to listen to an injured worker whose story is representative of many injured workers' experiences. From his story, you should gain a full understanding of why these changes are absolutely necessary.

At this time I would like to introduce to you Mr Jim Jewell, who has unfortunately had to rely on the workers' compensation system intermittently for the last 21 years. During this time he has suffered numerous tribulations as a result of these shortcomings and would like to share some of his ordeals with you.

Mr Jim Jewell: First of all, I would like to say thank you to the committee for allowing me this opportunity to share with you my experiences in dealing with WCB over the last 21 years. As I'm extremely nervous about doing this, please bear with me.

I know what the shortcomings in the system have done to my life and any changes that you can implement to remove these shortcomings would certainly be welcome. Even though some of these changes will be too late to benefit me, it certainly could prevent other young people from suffering a great deal of needless mental and physical pain.

I realize that in order to give everyone an opportunity to speak, time is limited, but trying to put 21 years of my life into 20 minutes is extremely difficult, but I will do the best I can to keep it brief.

I come from a family of 12 children. I left school after completing grade 8 to find a job in a career field. I was

always interested in mechanical things and what made them work, and I found an excellent opportunity to learn the auto repair trade and became a mechanic. Early in life I was always good at taking things apart but not quite smart enough to get them back together.

At the age of 20 I received my class A interprovincial auto mechanic's licence and over the next 11 years I was married and raising a family. We bought a home and owned our own business, which was doing very well. Life was very good and financially we were able to enjoy vacations, trips abroad, recreational family activities, as well as luxury items for ourselves and our son.

In 1973 I suffered a work-related back injury and became involved with WCB. Over the next six years, as a result of this injury, I had back surgery on two different occasions, which resulted in a fusion of my lower back. At this time the surgeon advised me not to return to my former type of work as the fusion would leave my lower back rigid and leaning over fenders would put added strain to the area above the fusion.

In order to maintain financial stability in our lives until I became healthy enough to search for a new field that would allow me to support my family, as the funds I received from WCB at that time, which were temporary benefits less my pension, were minimal—and the fact that I could no longer continue working in our business—we were forced to sell our business to be able to have enough money to live on during this period.

Approximately one year after my fusion, with no assistance from the board, I was fortunate enough to find work with a company that manufactured and decorated plastic auto parts. Even though they were aware of my previous back injury, they were willing to give me a job and train me in a new field. This new field was not as physically demanding.

Unfortunately, in 1981 I slipped on a wet floor at work and caused further injury to my back. The severity of this second injury caused me a great deal of pain and I remained off work for at least 18 months. Approximately one year after I suffered this injury, I received a letter from the WCB stating that they felt I had reached my previous pension level and that temporary benefits were being stopped, even though at that time my doctor had sent in his report stating I was not able to return to work. I remained off work for an additional six months before I was physically able to return to any type of work.

The only income we had through this time was the small pension I was receiving from WCB, and in order to live we exhausted the last of the savings we had from the sale of our business. The financial hardships we suffered, as well as the mood swings I experienced because of the pain medication I was taking, caused more stress than my wife and I could handle and we lost our marriage and our home.

It was at this desperate time in my life that I approached the WCB to see if there was any possible way they could help me. They told me at this time that there was a vocational rehabilitation service available. This was the first time since my first injury in 1973 that I was made aware of this service.

Since 1982, I have been involved with voc rehab several times on different types of retraining programs. Because of the physical demands of these jobs, I suffered recurring back pain and injuries and was not able to fulfil the contract. I was told by rehab that these training programs were within my physical restrictions.

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During this time, I had asked if I could possibly return to school to upgrade my education, which would allow me to gain suitable employment in a higher-tech field that would not be as physically demanding. My request was not dealt with until late in 1992.

At this time, I was scheduled by WCB for an assessment to determine my eligibility. The report, which I got a copy of, said that I could absorb the instruction that I would require. Unfortunately, by this time my back was so bad that I could not sit the length of time required in a classroom.

I don't have the time to explain all of the mental anguish and pain I have suffered over the last 21 years. I would, however, tell you that I am a proud and intelligent person. Due to circumstances that I could not control, I have suffered a great deal, and I feel that the WCB system failed me at a young age, when it could have provided me with a higher education and would have been most beneficial to myself and to the board. I strongly feel that if I had been made aware of these services in 1979, I could have upgraded my education and gained suitable, less physically demanding employment in a field that would not have caused further injury to my back. This would have most certainly reduced the cost to WCB.

Throughout this 21-year period I have cooperated fully with all of WCB's requests and recommendations. Even though I did this, it was always a struggle to obtain benefits. The fact that they gave me a pension seemed to be a way for the WCB to cut my benefits at any given time. Any time I was receiving benefits due to a recurring back injury and was under doctor's care, I would receive a letter stating that I was at my pension level and benefits were being cut. This occurred even though my doctor's report stated that I was not able to return to work.

The pain and stress I have endured and not having a stable income to support myself for all of these years has cost not only the hard work I put into building a future for myself and my family at a young age, it's also cost me a second marriage and a six-year relationship with a woman.

But to this day I have not been able to recover from the financial burden, because benefits were continually being cut and I repeatedly had to prove to the WCB that they should not have been terminated. The length of time it took to get reinstated would drain my bank account and leave me in debt, and if it were not for the moral and financial support that I received from my family and friends, I could never have made it through these times.

There was a period of three years when after a strenuous and very rigid exercise program that I became involved in on my own, I was able to strengthen my back to the point that I was able to again, without the assist-

ance of the board, gain suitable employment and return to the workforce, earning a decent living.

However, due to the negligence of another employee, I fell backwards from a high platform and, yes, injured my back again. This occurred in 1990, and since that time I have suffered dearly. I am currently receiving temporary benefits that took six months of struggling with the WCB to receive, and during this six months trying to survive on my pension, which amounts to \$530 a month. This put me into debt again, and once more my family and friends lent me the money to survive.

Without the assistance of the staff at the office of my local MPP, Pat Hayes, I know I would not be receiving these benefits, and these are benefits that I am entitled to.

The greatest fear I have is receiving a letter, instead of a cheque, in the mail from WCB that states that my benefits are going to be cut again and once again I will have a total of \$530 a month. It is this fear that has brought me here today to ask for your help. If this pension increase is allowed, even though it certainly is not a great amount, it would be a help, and it would be \$200 less that I would have to borrow from my family.

I would also hope that this committee will look at the shortcomings of vocational rehab and improve the system so that other injured workers do not have to go through what I had to go through over the last 21 years. Thank you for the time.

Ms Moynahan: After hearing Mr Jewell's story, I can't emphasize enough how important it is to go forward with Bill 165, especially subsection 53(10), which deals with vocational rehabilitation. We support this section, but we would encourage you to change the words, "if possible, the worker's physician" to "and the worker's physician." In Mr Jewell's situation, had all parties been active in the vocational rehabilitation phase earlier on, he most likely would have returned to safe, suitable work rather than being totally unemployable now.

The Vice-Chair: Thank you. Mr Hope. You have about a minute each.

Mr Hope: A minute each? That doesn't leave a lot of time.

In your presentation, I was going through and I noticed it's been repeated a number of times, changing "may" to "shall." Why are you so affirmative on that change?

Ms Moynahan: I just think that "may" leaves it open for the board to at any time not perform or not do what the intent of the act really is. So if you say "shall," it's going to happen; "may" may not happen.

Mr Hope: Okay. During the period from 1973 to 1992—and it's Mr Jewell, is it?

Mr Jewell: Yes.

Mr Hope: Mr Jewell, during that time, and I was listening to your comments that you expressed, did you feel you were spending more time proving your accident or illness versus actually looking for rehabilitation, that there was more time spent with the staff arguing about your claim versus actually looking for rehabilitation and re-employment?

Mr Jewell: Definitely.

Mr Hope: How do you think that would correct the issue, if we were to do that now administratively? We can't turn the clocks back and fix the problem back in 1973.

Mr Jewell: No, I realize that.

Mr Hope: So we have to look at progressive changes which you've asked for so that other injured workers don't fall into the same situation. In your recommendation, how can we do that today to correct that issue?

Mr Jewell: I'm not sure I fully understand the question, but maybe Erna can help me with that one.

Ms Moynahan: Yes. With regard to our submission, and especially with regard to experience rating, with the employers we deal with, and we quite openly talk about experience rating, that is their one incentive for returning injured workers to work. It's not because they truly care that the injured worker got injured. Unfortunately, it's not.

One of our employers is very active in returning injured workers to work and also in allowing the union to participate. In our environment, it's a unionized environment. Mr Jewell never had the enjoyment of having a union rep or any representative up until just most recently. But in our workplace, one of our employers works quite closely with the union in returning injured workers back to work and their rebates are plentiful.

In another one of our units, the employer, up until most recently, until this employer purchased that employer, would not involve even just the workers in the return-to-work phase. They would just say, "Here are your restrictions; we feel you can do the job," and they would return workers back to inspection line work or whatever. That just constantly kept aggravating conditions to the point where these workers are no longer employable, and that's a cost on the system.

Now that we're involved in the system, we're monitoring it. We've taken a very active role. We attend all the return-to-work meetings and we make suggestions for change, and they're actually starting—especially the one employer who's getting surcharges—they're actually listening to our suggestions and working with us. I really would suggest that in section 103 you also include that it be a joint return-to-work process. I don't see that this emphasis is made and I can't emphasize how important it is.

Because if, for instance, in Mr Jewell's case, had it been a whole joint return-to-work process, including everyone, the doctor, the employer, the board and the worker, I think he would possibly have been returned to a suitable job at one of the accident employers or been retrained much earlier on, and he probably would be working today.

Mr Offer: I'd like to thank you for your presentation and you, Mr Jewell, for your sharing with us your personal history of working with the workers' comp. As will not come as a surprise, that type of experience is one which we, as MPPs, have had some experience with ourselves, working with our constituents. I think your particular presentation underscores the need to make certain that at the Worker's Compensation Board the very

best people are the first people injured workers come in contact with, either personally or through their representative, so that the type of experience that you have gone through need not be followed by others in the future.

By way of comment, I think your coming here today and sharing with us your particular personal experience helps us in working in that way. I really don't have any question, except to thank you for sharing your thoughts with us.

Mr Jewell: Thank you. I appreciate that.

Mrs Witmer: Thank you very much, Mr Jewell, for sharing the experience. Unfortunately, your situation is all too common. As MPPs, we hear it on a regular basis in our offices. Sometimes up to 50% of our work is devoted to helping injured workers access the system and getting some results from the system.

I would only say to you that I'm not convinced that Bill 165 will do that all much to help individuals such as yourself. There's a tremendous amount that needs to be done, and I hope it will be, but I'm not convinced at the present time.

Mr Jewell: Well, I'm just not up on what is included in Bill 165. All I'm interested in is sharing my experiences with you so that you can put in whatever it takes so that this doesn't happen to someone else.

Mrs Witmer: I think everybody around the table would agree we're all committed to making the system respond to individuals such as yourself as quickly as possible in order that you can get back to work.

Ms Moynahan: By placing a greater emphasis, as we stated, on the re-employment issue, I do believe that Bill 165 will address those issues. Unfortunately, it's money that talks with the employers and if we strengthen the language with re-employment and with the experience rating to offer the incentives to the employers, the good employers are not going to worry about the effects of Bill 165 because they are receiving the rebates already. If the poor employers are worried, and they're the ones who are addressing these concerns here today, then obviously it's a good incentive to proceed with so that they will make the workplaces safer.

Mrs Witmer: Unfortunately, the good employers are also going to be penalized under this system if we change the experience rating. We heard from a company this morning that could have an additional \$1 million of assessment levied on it if changes are made.

The Vice-Chair: On behalf of this committee I'd like to thank the United Food and Commercial Workers, Local 459, for the presentation this morning.

Mr Offer: Mr Chair, I'd like to take the opportunity to correct, I guess, my record. I posed a question earlier today that dealt with the issue of representation by the appeals tribunal on the board of directors, and it's been brought to my attention that indeed under Bill 165 the chair of the appeals tribunal is a non-voting member of the board of directors.

Having said that, I would also like to ask ministry officials or the parliamentary assistant, by virtue of the fact of representation, does it follow that the appeals tribunal, in total, is subject to section 58 of the bill? The

specific question I have is that by virtue of the fact that the chair of the appeals tribunal is a non-voting member on the board and the board is subject to, obviously, section 58 as to being financially responsible and accountable, does that go then to state that WCAT is also subject to section 58? I'd like to get that clarification as soon as possible.

The Vice-Chair: Okay.

Mr Offer: I don't mean to help you out.

Mr Hope: You were going to correct the record, not make a long statement.

The Vice-Chair: Thank you. We were unable to reschedule the 1:30 appointment, so this committee stands recessed until 1:50 pm this afternoon.

The committee recessed from 1145 to 1356.

The Vice-Chair: First of all, the committee would like to make an apology to the Ontario Association of Career Colleges. They were supposed to present at 11:30 but we didn't have confirmation that they were here, and after we had recessed we found out they were, so their brief was passed out to the committee members and will be taken into consideration.

Is the Hamilton and District Labour Council here? Is there anybody here? All right. I think we have agreement that the London Chamber of Commerce will present in their stead and hopefully they'll be here shortly.

LONDON CHAMBER OF COMMERCE

Ms Del Wright: Thank you. Good afternoon, ladies and gentlemen. My name is Del Wright, chair of the London Chamber of Commerce. With me is Jim Thomas, chair of our task force for Bill 165.

The London Chamber of Commerce is London's oldest and largest business organization, with more than 1,500 individual members representing 1,100 firms which employ over 50,000 people in London and region. As part of our mission to represent our members' interests, we study, report and comment on issues of concern to London and its business community. In the past, we have spoken on behalf of our member companies on such issues as workplace health and safety, pay equity, employment equity as well as the Workers' Compensation Board.

The workers' compensation system is one of the constant areas of concern for employers in the London area. Employers regularly see employees with questionable compensation claims gain entitlement without investigation by the WCB. At the same time, employees with legitimate claims are denied entitlement. Administrative costs of the WCB are perceived by employers as out of control. The unfunded liability of the WCB continues to grow with little evidence that a realistic plan is in place to stop its growth. In short, the employer community views the WCB as a system out of control and in financial crisis.

It is against this background that we have framed our comments regarding Bill 165. Because of the extensive number of changes contained in the bill it is impossible, in the limited time available, to comment fully regarding our concerns. In order to provide you with a more meaningful view of the bill, a number of employers from

London and region have joined together to present both their own company or association views and general views of employers gathered in meetings held prior to these hearings to coordinate presentations.

The London chamber has taken the responsibility to discuss two areas of concern to employers. These areas are the addition of a purpose clause to the WCB legislation and the governance of the WCB.

The idea of a purpose clause was initially recommended by the business representatives to the Premier's Labour-Management Advisory Council and contained language to ensure the WCB is accountable and acts in a financially responsible way. This was the understanding that was agreed to by members of the PLMAC. But when the bill was drafted, that language was excluded from the purpose clause and placed in the body of the bill. We believe this subordinates the financial responsibility framework and that the financial responsibility framework needs to be returned to the purpose clause.

The purpose clause, as currently drafted, will be used to expand entitlements currently limited by the legislation. There is no reference to the framework of financial responsibility. The purpose clause refers to "fair" compensation, but fair to whom? Certainly not to employers. The WCB system is currently running an unfunded liability of \$11.6 billion that is expected to grow to at least \$31 billion by 2014 if no changes are made to the current system. The \$16-billion reduction in the unfunded liability spoken of by the government actually represents a \$10-billion increase over the provisions of the original PLMAC accord. Despite this looming financial disaster, the drafters of the legislation have taken a one-sided view of fairness. The language of the purpose clause makes no reference to the financial ability of the WCB to pay such fair compensation.

Why is this important? Look at one example. Section 65 of the act is amended by adding new language that requires the WCB to ensure that "...generally accepted advances in health sciences and related disciplines are reflected in benefits, services, programs and policies in a way that is consistent with the purposes of this act." With no reference to financial responsibility within the context of the purpose clause, this section would now obligate the board to implement new benefits with respect to such things as stress claims or emotional and behavioural conditions without regard to the financial consequences of expanding the scope of entitlement under the act.

We strongly recommend that the bill be amended to include a requirement that any expansion of benefit entitlement be limited by the financial ability of the WCB system to pay for such benefits. In addition, the purpose clause should contain a mandate for the WCB that would place the actions of the board of directors, the administration and the Workers' Compensation Appeal Tribunal, WCAT, in a framework of financial responsibility.

Bill 165 changes the structure of the WCB from its current structure to an essentially bipartite system. The board of directors will be composed of an equal number of union representatives and employers. Workers not represented by unions have no voice and are effectively disfranchised from the process. This is a formula for

disaster. The closest example we have of how an agency based on this structure works is in the area of workplace health and safety. The Workplace Health and Safety Agency is now in a state of deadlock and organizationally paralysed. This is not a structure that recommends itself for duplication at the WCB, which is responsible for a far more complicated and politically sensitive area. This structure needs to be rethought. The real responsibility for WCB rests not with a board of directors but with the Ontario government.

The government should be directly responsible for the WCB. It could then be held accountable for the kinds of decisions that the WCB is making and not continue the myth that the board is somehow independent. The provisions of Bill 165 provide for the government to issue policy directives to the board of directors for a period of one year after the bill is proclaimed. This is a clear indication of the degree of independence the government expects of the board of directors.

The minister should be directly responsible for the actions of the WCB. As the public debate over this legislation indicates, it is the government that dictates the framework for the operations of the board. True political accountability for the board would ensure that responsibility for decisions, such as the building of a new office building, would be placed at the minister's desk and that the minister would be directly responsible for those decisions.

There are numerous other concerns that our members express about the Ontario WCB system. Most commonly expressed concerns surround the level of benefits; the lack of control over the system and the cost of the system; and ineffective return-to-work arrangements. Ontario's WCB system does not deliver good value for the money spent. In the competitive environment that our members operate in, they are required to control expenses and provide their customers with fair value. That same responsibility is the absolute minimum that Ontario employers require from the Workers' Compensation Board. We are not getting it today, and this legislation does little or nothing to ensure that we will see any improvements in the future.

Mr Steven W. Mahoney (Mississauga West): Thank you for your presentation. Just perhaps on the last point that you made with regard to government accountability, first of all, this bill does give the minister complete authority over the WCB for a period of one year and then it's over; that's repealed automatically in the legislation.

I've heard concerns, particularly from some of your colleagues, I would think, in the business community about the damage that could be done with political interference and direct control by the current government, by the current Minister of Labour over the WCB, and it sort of flies in the face of what you're saying here. Do you not have those same types of concerns about decisions in workers' compensation becoming politically motivated rather than being made by a non-partisan group with the interests of both the workers and the employers at heart?

Mr Jim Thomas: Maybe I could respond to that. It's exactly the thing you've outlined that causes us to take

the position that we took. We're deeply concerned about the political tinkering that occurs and the responsibility for those decisions should be placed directly at the feet of the Minister of Labour or the appropriate minister, who should be accountable for them and continue to be accountable. It's a myth that the WCB is independent. It's a history of several governments tinkering with the WCB system that has got us into the financial mess that we're in.

Mr Mahoney: You can appreciate, as we've experienced in the last four years at least, that one never knows what government will be in power, what philosophy will be driving the government of the day or the minister. Would we be better off to enshrine independence somehow in the legislation and go the opposite route?

I would point out to you, on your example of the building being built without cabinet approval, it was proven quite clearly through committee hearings that we held last summer that there was a requirement for cabinet approval and that approval was not even sought. They attempted to use a loophole by playing around with the tenure of the building, the fact that they would be tenants and partners and the investment fund was really not the board; it was the investment fund. They tried to arm's-length this thing, but clearly we had reports to our committee, and the auditor even reported that the rules of the game were violated, that there was a requirement for them to come before cabinet. They didn't do that.

So those rules are there. I'm just a little concerned with specifically what you're asking for, that it's going to leave us wide open to more tinkering and more political gerrymandering.

Mr Thomas: It's hard to believe there could be much more.

The Vice-Chair: Thank you. Mrs Cunningham.

1410

Mrs Dianne Cunningham (London North): Thank you, Mr Chairman. I don't really want to talk about the building and I don't think Mr Mahoney should have raised it, but that's beside the point.

Mr Mahoney: Excuse me. The deputant raised it.

Mrs Cunningham: Commonly expressed concerns with regard to level of benefits, page 3: Here in London, this is probably one of the bigger issues. In my constituency office it takes a lot of time. I'm sure my colleagues would agree with that in that people are not getting the kinds of services they require from the Workers' Compensation Board. Today I would say that the legislation would not solve the problems of the last participant as he described his concerns before lunch. To me, it was clearly a problem with the rehabilitation system itself and should have been solved within the existing structure of the rehab system probably 20 years ago, which this bill doesn't address. That's another issue.

Could you expand upon the concerns that you hear with regard to the level of benefits, the lack of control over the system and the cost of the system? Can you give us some examples of the kinds of things you hear?

Mr Thomas: From employers?

Mrs Cunningham: Or employees. I'm sure every-

body's concerned. They all pay taxes.

Mr Thomas: Sure. From employers specifically we have regular comments about the disincentive to return to work by a system that allows people to, in effect, take home more than they would by working. That seems to be inappropriate to employers.

I agree, Ms Cunningham, that the administration often results in the worst possible circumstances, where people who are entitled to benefits don't get them and people who are not entitled to them do get them.

Mrs Cunningham: What about costs?

Mr Thomas: You just have to look at the numbers. The costs are just out of control.

Mrs Cunningham: We were told this morning by one group that there's a \$6-billion surplus.

Mr Thomas: I can't account for other people's accounting. I can only account for the numbers that we see on a regular basis. There's an unfunded liability of \$11.6 billion, \$11.7 billion. That's a bill that's due. We're going to have to pay it and we can't afford it.

Mrs Cunningham: Thank you.

Ms Murdock: Thank you very much. The top of page 3 is where I'm directing my question to, and if there's time I know Mr Ferguson would like to say something.

It's the whole concept of implementing "new benefits with respect to such things as stress claims or emotional-behavioural conditions with regard to the financial consequences of expanding the scope of entitlement under the act." I guess it's a philosophical difference, but if a worker has an injury or a disease and it is proven to be related to the workplace, that worker deserves to be compensated for that injury or disease, and that was the deal that was struck in 1914 by the employers in order to save them civil liabilities.

I'm concerned because you're not the first group that has come forward with the concern about stress being recognized. I'm especially concerned when I consider that WCAT has only recognized five cases. It has denied many, many more than that, but it has only recognized five where it is directly stress and no one could say that it wasn't stress.

The other thing is, already the board recognizes things such as psychological stress. That's already accepted, so it isn't anything new and Bill 165 isn't going to change that. It'll still be part of the policy of the board. I guess what I'm asking is, I don't understand what your concerns seem to be in that first paragraph.

Mr Thomas: Our concerns are very specifically the cost of the system, that the provision of benefits needs to be within the affordability of the system to pay for it. This language refers to the purpose clause, that the financial responsibility framework be included in the purpose clause and not be subordinate to the purpose clause as it currently is.

Ms Murdock: But you're not saying, at least I hope you're not saying, that workers should not get benefits if the board can't afford to pay for them?

Mr Thomas: I'm saying that the provision of benefits in such areas as stress, the addition of those kinds of

benefits, needs to be within the context of the ability of the system to pay for them much in the same way that we have to deal with the ability to pay for things within our medical system. We may have to ration some things.

Ms Murdock: You can't ration injury, I'm sorry.

The Vice-Chair: Thank you very much. On behalf of this committee, I'd like to thank the London Chamber of Commerce for its presentation this afternoon.

AMERICAN FEDERATION OF GRAIN MILLERS,
LOCAL 154

Ms Jody Jones: My name is Jody Jones. I am a WCB representative for the American Federation of Grain Millers, Local 154. I would like to thank the committee for the opportunity to speak here before you today. I have brought with me an injured worker, Dale Schoffer, with whom I will be sharing my 20 minutes.

The provincial government has introduced Bill 165 in conjunction with a royal commission as its answer to combat the administrative and financial problems that burden the Workers' Compensation Board.

We, the American Federation of Grain Millers, Local 154, fully support the OFL's position on WCB reform. We are very encouraged to see that the bill includes sections like subsection 54(11.1). It gives the Workers' Compensation Board reasonable powers to launch on its own initiative an investigation to determine whether the employer has fulfilled its re-employment obligations. It's easy to understand why some employers would reject this section, but those who fulfil their obligations would have nothing to fear.

Listening to Bill 165 opinions during the last week, it seems clear to me that the true cost-reduction measures are in prevention and re-employment. The original framework for WCB reform intended to promote return-to-work programs that provided for the participation of all workplace parties. This was excluded by the legislation drafters. Therefore, one of our main concerns is with subsection 103.1(2).

Experience- and merit-rating programs, more specifically the employer's refund or surcharge depending on workplace programs: This section refers to health and safety practices and programs of the employer, vocational rehabilitation practices and programs of the employer and return-to-work practices and programs of the employer. We feel this section blatantly neglects to mention any joint participation or cooperation between workplace parties. We strongly feel that joint cooperation between workplace parties is crucial and that anything less defeats the true intent of WCB reform. Be assured that if an employer can get a refund by developing a program, they will develop one very quickly. However, if the refund depends on a cooperative program, a much different effort will be required. Cooperation by all workplace parties is imperative to make any program a success.

It is my experience that employers are currently more concerned with returning injured workers to any work without taking into consideration their own individual skills potential. Therefore, workers are reluctant to cooperate because of their mistrust of the employer. At this point, because of the absence of a true joint return-

to-work program, we are now tied up in the appeal process, thus adding yet another unnecessary cost to the workers' compensation system. It is imperative that when returning an injured worker to work we either accommodate the worker's pre-injury job or try to return a worker to other comparable, meaningful work.

Accommodations are another area of concern. Often an accommodation is interpreted as reassigning the work to other workers. In some of these cases, the injurious work is still in place but not done by the previously injured worker, thus possibly endangering the health and safety of others. With a joint effort, these situations could be identified better. Cooperation by all workplace parties will be imperative to make any program a success. If return-to-work programs were all joint in nature, I'm confident injured workers would return to work quicker and safer and to more meaningful work. We would also see an increase in the number of workers actually returning to work, thus refunding deserving employers. Prevention and re-employment are the ultimate key to reducing the unfunded liability. With "joint" added to subsection 103.1(2), what better way to begin a cooperative environment than to have employers' money depend on it?

1420

I would like to bring to your attention a quote from a letter written to Gord Wilson, president of the Ontario Federation of Labour, from Pat Palmer, chair of the Ontario Chamber of Commerce, dated August 9, 1994:

"The Ontario Chamber of Commerce is always willing to join with the Ontario Federation of Labour in working together on any and all issues of common concerns. Our views may differ, but we continue to believe that a willingness to work together for our common good is needed from organized labour and business in Ontario."

If the attitude reflected by Pat Palmer is genuinely that of the business community, I'm confident that adding "joint" to subsection 103.1(2) will do us all the good we so desperately need.

At this time, I would like to introduce you to Dale Schoffer, an injured worker who would like to share with you some of his experiences. Thank you.

Mr Dale Schoffer: My story begins in June 1990. I slipped and fell in a wet sump area where I work. I tore up my shoulder. I went through the steps at therapy and everything else. They found out that the injury was worse than they had originally thought, so I had to have surgery. Before this, up until this time, I played ball with my kids. I've got two boys of 11 and eight and used to love to enjoy going out and playing with them.

Since this has happened, I've been off work. I was off work for two years and three months. The board had said that I was able to go back to suitable work in March 1992. My employer said there was no work for me, nothing. They had no jobs available for me that I could do. I went to the union. The union fought for me, but because there's no joint return-to-work program, the union just had to go by what my employer was telling me.

I kept bothering everybody, kept bugging the union. Every time I had a meeting with workers' comp I told

them that still my main goal was to return to where I worked. They told me that the two years was coming up, that I had to think about getting retrained, something else, all this. I didn't want any retraining. I wanted to return to where I originally worked.

When we went down to where I worked, they had studies go on. There were supposed to be accommodations done to the job. They talked about me going back to my original job. Finally, in September 1992, I returned to my original workplace, up in my original work area. The accommodations that were supposed to be taken care of, to this date right today there have been no accommodations made. The job includes the lifting of 88-pound bags of sugar to make batches, 11 of them at a time, like in a time frame. These are still there. They still have to be lifted the same way. The guy who did the study said that nobody should have to lift these. For me to do the job, I've had to do the job. I do lift the bags once in a while. Also, they won't schedule me in that area. They schedule somebody else to do that area.

I'm wondering: Is this what the accommodations are? Do they just take me away and put somebody else there till they get hurt? I really don't know how long I'm going to last where I am. I feel that if at any time my shoulder gives out on me—I'd been told all along that my shoulder wouldn't come around, I wouldn't be able to do anything. What happens to me now should my shoulder give out? Will my employer then tell me they have no suitable work for me again? Thank you.

Mrs Cunningham: I'd like to thank you for your presentation. I think it's extremely reasonable. I'm not sure, with what Bill has described, if in fact the addition of the word would be helpful. If it is, that's great. I think Bill's story is one that we would hear in our office probably three, four times a week. If I'm not listening to it, my staff are. It has a lot to do with retraining, job availability, job opportunities. Just from Bill's own story today, if I were sitting in my office I'd probably say something different or ask different questions than what I feel comfortable in asking now. I'm not sure what your riding is, but I'm available is the point I'm making.

Again, I refer to the person who was here before lunch, Jim Jewell, who described his story. I think his concerns were less with the legislation and more with the training and retraining and opportunities for education. I know how you feel in injuring your shoulder, but I still also understand why you would probably want to go back to the same company. Am I correct?

Mr Schoffer: Mm-hmm.

Mrs Cunningham: And what was more, the company, the location, that kind of thing?

Mr Schoffer: That, plus I had 10 years there. I don't think anybody, when they work someplace for 10 years all of a sudden wants to be told you can't work there any more and your whole life—I've got 10 years' seniority there. I finally got to the point where I can take holidays when I want them, because I'm getting up in seniority, and good pay, everything else. I didn't want to lose that; I didn't want to see my life have to change.

Mrs Cunningham: I can tell you right now, Bill—

Mr Schoffer: It's Dale.

Mrs Cunningham: Sorry. What's your last name?

Mr Schoffer: Schoffer. It's okay.

Mrs Cunningham: I mean, if you do want to talk more to me, I wish you would come and see me in my office because I'm not sure how legislation can assist your concern in particular. But I think there is probably a better system. How we work it through, I don't know, but I don't see it in this legislation, because I think that even if we had the "joint" in this case, you might still have your fellow workers and that employer saying, "Look, with what you can do, there may not be or will be a position." If you had it with "joint" in there, then what can we do with not yourself but people in your position who have in fact acquired a certain benefit level and pension level? If that's an issue, that's something that we have to look at, because I don't see it addressed in this legislation. I'm not criticizing the bill in that regard. I'm saying that I think it's a different issue and how do we deal with it? That's all I'm saying. I don't think "joint" is going to solve Dale's problem.

Ms Jones: With "joint" in the legislation, in Dale's case we would have had a procedure and a program to follow and brought him back to the suitable work right away while we worked on the pre-injury job. He was still on the board payroll for that six months that it took us to even get him in a work trial, and all that time it's board money. We could have easily been saying, "Can he just maybe do this job up until we work on this accommodation?" Everything was getting put off and it was that huge time frame of stall where we could have actively had more of a voice if we had an actual structure or program.

Mrs Cunningham: Okay. That's why I said in the beginning that I agreed with your presentation. All I'm saying is that in the end we still have the problem to deal with if there isn't a spot. The legislation may, in some cases, help some employers find a different opportunity for work. I can tell you that here in London there are four or five companies that I've dealt with that would have found that spot anyway. But there's no harm in beefing it up.

1430

Mr Ferguson: Thank you very much, Mr Schoffer and Ms Jones. I certainly want to thank you on behalf of the government members for attending today.

I have one question. I want to pick up, Ms Jones, on the last two paragraphs of your brief to us today. You talk about the position of the Ontario Chamber of Commerce, as well as that of Mr Palmer. I wanted to ask you if you are aware that most, if not all, of the business groups that have appeared here today have suggested that the benefit level for injured workers is much too high, that in fact the government isn't going far enough to reduce the benefit level for injured workers and that the goal that the government ought to have in mind is what's going to happen by the year 2014. It's been suggested on more than one occasion that the benefit level ought to be not 90% of net earnings for injured workers, but that it ought to be reduced to 80% for every injured worker here

in Ontario today. That's the position, I understand, of the Ontario Chamber of Commerce.

In light of that, I'm wondering if you would have any comments about what kind of position that would put injured workers in, recognizing—and I'm not sure the business community has fully grasped this—that a loss of net income to workers means that people have less money to buy goods and services which many of the members throughout the Ontario Chamber of Commerce participate in selling to people. You don't have to be a rocket scientist to figure this one out. If people have less money, they're obviously going to be buying fewer goods than their members produce.

I'm wondering if you could tell me what kind of effect reducing benefits to injured workers would have on your membership?

Ms Jones: I think that working together in the joint programs helps us to progress forward on how we can make the whole thing better and better all the time. I think taking the money off the back of injured workers just seems like a quick fix. I can't understand at what point we're going to stop, because when we take a little bit away from them and then we just keep going, I can't see how that's going to help the big picture. I just can't see how taking away from them a little bit at a time is going to solve any problems at all.

I have a quote here from Saturday's London Free Press where Labour Minister Bob Mackenzie says, "If we could improve our return-to-work figures by just 10%, I am quite convinced that the total savings would be in the billions." I think that's where the answer is. I think joint health and safety has already come a long way—I really believe that—and maybe the employers should be rewarded financially for their efforts. But I don't think return to work is as common a forum in the workplace. We may have return-to-work programs. They may or may not be employer-dictated or joint. I think joint health and safety, as far as it's come, has already shown us progress. I'd like to see the return and the VR goals as good.

Mr Mahoney: Actually, I think you've identified probably the problem and the solution. I really do. In fact, I find it rather interesting that a labour group is here quoting Pat Palmer. That's unusual and maybe a sign of hope. I agree with you that the issues of prevention—obviously prevention—and return to work as quickly as possible are ultimately what's going to streamline the whole process.

Maybe I can get your response to a couple of concerns. I think there's more than just the employer and the worker who should be involved in some kind of return to work, modified work, whatever it happens to be, the solution to that particular injury. I think it should involve the medical community, and that could be anyone from a doctor to a health and safety specialist to a physio specialist. It could involve any group along those lines.

In fact, one of the recommendations we made in our report was that the return-to-work program involve people other than the traditionally identified stakeholders of employer and worker and get these people actively involved in coming up with recommendations for the board. It would be more than joint; it would be a total

program that would involve professionals in other areas. I just wonder how you feel about that.

Ms Jones: I totally agree. There's a mill in Thunder Bay that presently works. They have a very heavy joint return-to-work program and they're very money-driven as far as their progress is concerned. They know the dollars and figures on every little piece of togetherness that they do. In a lot of their stuff that I've read, it has shown that another issue they cover is the education of the workplace to help the people identify maybe what causes an RSI, and maybe we won't do that, because there are things specific to each person's job, maybe properly how to lift. Everybody assumes people know that, but sometimes they really need to be told or they just don't know. Especially in the field of RSIs, people need the education, and somehow that seems to come under return-to-work programs.

Mr Mahoney: You mentioned, though, if I could just interrupt you, that the situation under health and safety committees etc has worked and you've seen positive action out of that, and your comment—I can't quote it exactly—was to the effect that maybe the employer should be rewarded for that.

Ms Jones: Sure.

Mr Mahoney: So in essence, then, why wouldn't you have a system where the employer could actually improve their bottom line if they helped the worker return to work quicker, if they helped prevent accidents, so it becomes an incentive plan, just like health and safety, rather than a punitive plan of action that this bill shows with WCB police coming in and saying, "Do this and do that." Put the onus on the employer by giving them the one thing that every labour group has said, you know, they're driven by profits. Let them increase their profits and get people back to work. Does that not make more sense?

Ms Jones: The only thing is that if it just depends on their profits, sometimes they don't have a way to know the direct financial gain by just going by the overhead profit. They need to be specifically rewarded, as in their—when employers that I deal with get a refund, they're very proud of it. They let us know how much it is, and it has to come back in that big chunk of dollars.

In the Thunder Bay issue that I referred to, they have actually found ways to master the specifics of it. I think most employers may not give that the time, but if they were rewarded with this, with "joint" added to this section, I just think they'd almost be forced. All of us, even the labour side, would be kind of forced to work together to make it happen.

Mr Mahoney: Good points. Thanks.

The Vice-Chair: On behalf of this committee I'd like to thank the American Federation of Grain Millers, Local 154, for their presentation this afternoon.

I'd like to call our next presenters, Graham E. Smith and John C. Gallant. Are they here? No. Okay

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Vice-Chair: I call the Ontario Public Service Employees Union, Local 528. Good afternoon and welcome. Please identify yourself and then proceed.

Ms Diana Clarke: Yes. My name is Diana Clarke,

and I am the OPSEU workers' compensation benefits officer. I cover the entire province and handle, along with two other colleagues, the bulk of WCB appeals for the worker's compensation for all OPS and the broader public service. Also I'm a member of Local 528 out of Toronto.

Ms Cindy Haynes: I'm Cindy Haynes. I'm the chief steward at Local 108, which is Elgin-Middlesex Detention Centre, and I'm with OPSEU.

Ms Clarke: You have before you our brief and we thank you for the opportunity to be able to make this presentation today. There are really two parts to this presentation, a bit of the formal, which you have in front of you, and we'd also like to discuss a couple of the situations that we have found common that have happened at the work site that we think would be of interest to the committee.

I'd like to start with what you have before you, which is the brief. OPSEU has appeared and will be appearing a number of times in front of you, but our focus today we believe is rehabilitation and reinstatement, and that's what we'd like to focus on today. We will be making some comments in the Sault and other locations on some other items, but this is what our focus is and this is what we believe are the primary needs that need to be addressed. This brief will outline to the committee OPSEU's rehabilitation and reappointment concerns and recommendations surrounding Bill 165.

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Our union represents about 95,000 workers across Ontario, and its members also represent the largest number of appeals for unorganized injured workers in the workers' compensation system. We want it noted that the office of the worker adviser are members of our union, as well as many community legal clinics.

OPSEU has always supported the right of injured workers to rehabilitation and re-employment. It includes the right to return to work safely and with dignity. Unfortunately, the current Workers' Compensation Act only provides for workers, for the purposes of vocational rehabilitation, the right to an assessment and contact by the board after 45 days of a lost-time claim. All other board vocational rehabilitation services are offered at the discretion of the board. Reinstatement remains just an obligation to re-employ within the first two years of injury or within one year of the notice of the worker being found capable of returning to any type of work or until age 65, whichever is sooner. It also only represents workers who actually have injuries after 1990. We have a lot of workers who have pre-1990 injuries, and we have a lot of difficulty in re-employing these workers, because it tends to be the employer sets a separate standard for these workers.

Bill 165 proposes a number of changes to the vocational rehabilitation process and re-employment, particularly focusing on return to work with the accident employer. The failure to successfully reintegrate injured workers into the workplace is, aside from poor health and safety practices, the single greatest source of avoidable costs in the workers' compensation system.

Board statistics indicate that the majority of disabled workers who successfully return to work after injury are employed by the accident employer. It must be recognized that in most cases, a successful return to work to the pre-accident workplace is actually negotiated between the workplace parties themselves. The key to a successful return to work is the trust between workplace parties.

Bill 165 offers employers unprecedented access to medical information and an increased say in vocational rehabilitation programs, even when the relationship does not exist. Even when an employer has flatly refused to re-employ an injured worker, it will now have the continuing right to interfere with that worker's rehabilitation.

Federal and provincial human rights laws require all employers in Ontario to accommodate their injured workers unless it can be shown that the accommodation would cause undue hardship to the employer. What sense does it make for the workers' compensation system to impose a lesser standard? Whenever accident employers fail to re-employ injured workers, the social cost is not eliminated; it is merely passed on to other employers, the board, individual workers and ordinary taxpayers.

OPSEU uses the Ontario Human Rights Code standard for accommodation in all return-to-work and accommodation situations for its members. Unfortunately, the current limited language under section 54 has been insufficient to bring the employer to the table to discuss appropriate accommodation re-employment. Frequently, we must resort to the filing of grievances to deal with these issues. Bill 165 will not likely substantially improve injured workers' rights for return to work with an uncooperative employer if they are not covered by a collective agreement and/or they must use the existing human rights laws.

We have found that once we are able to work with employers in a cooperative manner on returning injured workers to the work site, the process has not been difficult and a number of creative solutions have been arrived at without inconveniencing anyone.

So there are a number of improvements we feel need to be done to section 54, and some of them are not part of this bill, but having had a lot of experience where our members currently represent about 50% of all re-employment hearings, we think we have some suggestions for the committee.

OPSEU does welcome the introduction of the proposed subsection 54(11.1). Although the board has the power to do this even since the introduction of section 54, this explicit authority will make it clear that the board need not wait for the application from an injured worker before beginning this section 54 process. It is hoped that it will also remove some unnecessary complications and time delays.

Since its introduction in 1989, the threshold requirements for the section 54 obligation have been unnecessarily restrictive. As pointed out earlier, only workers who are under Bill 162 are covered currently as well, and we didn't put that in the brief but we'd like you to note that. At present, an employer must regularly employ 20 or more workers before being subject to the section 54

obligation. This leaves the fate of many OPSEU members in doubt, including those employed by community legal clinics to represent injured workers.

The same may be said of the requirement that an injured worker must be employed by an accident employer for a minimum of one year before the injury. No such standard is required under the Ontario Human Rights Code.

Section 54 should be amended to impose an obligation to offer suitable modified work whenever this would not cause the employer undue hardship. At present, subsection 54(5) only obliges employers to offer suitable work which "may become available." Employers who are not willing to make work available when it is within their power to do so should directly bear the costs of their actions.

Section 54 should be amended to oblige employers to maintain the employment of injured workers for a minimum period of time which would allow them to become fully integrated into the workforce. At present, if an injured worker who had a serious work injury returns to work two weeks before a deadline set out in subsection 54(8), the re-employment obligation lasts only two weeks. This hardly qualifies as vocational rehabilitation.

The proposed move towards front-line adjudication will have little effect unless the board is explicitly empowered to apply a rigorous, objective standard to employers' behaviour. The period of subsection 54(10) presumption must be extended to cover the entire period of the obligation. Right now, if the employer takes you back after three months, the presumption is now on the worker that they've satisfied and we have to go through the process of appeal to get the employer to continue to employ this worker.

Board policies setting out a just-cause standard for rebutting the subsection 54(10) presumption and mandating the imposition of the maximum penalty in all but the most exceptional circumstances should be enshrined in the act. These policies were arrived at through a lengthy process of bipartite consultation and embody a just and economically sound interpretation of section 54. Just cause is the standard that's applied in the Ontario Labour Relations Act. It's the same one we believe should be applied here.

When employers fail to take reasonable steps to mitigate workers' wage loss and rehabilitate workers through re-employment, they must bear the cost of rehabilitating workers by other means.

We'd like to comment on the consent and the release of medical information, the section that's been proposed in the bill. This section obliges a physician to provide prescribed information about a worker's physical abilities with the worker's consent and would be based on an amendment to subsection 63(2) to create a regulation that sets out the prescribed medical information.

The proposed subsection 51(2) requires the consent of the worker. However, will a worker be deemed uncooperative by the board if he or she refuses consent? Employers have already attempted to circumvent the current sections 23 and 79 of the act. We believe the

current wording of the bill may open further problems.

We would submit that there's no place for the employer to be contacting the worker's doctor directly. Through a prescribed form provided by the board or via the worker, we believe the necessary information can be provided to facilitate appropriate accommodation and return-to-work programs. The form should be drafted in consultation with representatives of the business, labour and medical communities and be provided to the government for the regulation process. It must not contain any diagnostic information or violate any doctor-patient confidentiality rights.

The intent of the prescribed information is to facilitate early-return-to-work programs only. Before a doctor should be mandated to provide information, the doctor should feel comfortable that the information provided will help in accommodating the patient's disability safely through a workplace program.

OPSEU agrees with the position that was adopted by the OMA:

"The patient's responsibility is to ask the doctor for the information and understanding of their condition that they require to safely re-enter the workplace. The doctor's responsibility is medical diagnosis and treatment, medical rehabilitation and the provision of medical information. The employer is responsible for providing modified work options for the patient to choose from.... It is the patient's responsibility to keep the employer informed about all aspects of their rehabilitation process. This will require enhanced dialogue with their physician but that is to be encouraged anyway."

There is no need or justification for allowing employers to insert themselves into the doctor-patient relationship. Employers should support injured workers in a safe and gradual return to normal work duties rather than make them feel like criminals and layabouts who need to be constantly monitored by a higher authority. Workers want to go back to work. They don't want to delay. They know the penalty; they'll be cut off benefits. So in reality, giving a form and getting it done would be the easiest way.

Employer's vocational rehabilitation: The numerous amendments to section 53 "improve access for the employer to the rehabilitation process."

The employer already has the obligation to participate in the vocational rehabilitation process and offer re-employment. It's the worker who needs the vocational rehabilitation, not the employer.

Should an employer be able to interfere in a worker's vocational rehabilitation process if the employer has been deemed to be uncooperative or unable to provide such accommodation at the work site? The proposed subsection 53(10) would give the employer that right.

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Should an employer be able to interfere if the employer has not accommodated the worker? Once an employer has been deemed uncooperative to accommodate the worker's compensable medical impairments, offer re-employment or, due to reasons beyond anyone's control, cannot offer any work even after vocational

rehabilitation, the employer's involvement in the vocational rehabilitation process should end. We currently have a number of employers who suddenly appear and interfere in workers' retraining and education programs and offer short-term and limited re-employment, just to reduce the cost of the FEL award. Allowing employers to be involved in every vocational program when re-employment with the pre-accident employer is not an option is not only an intrusion on the worker but detrimental to the vocational rehabilitation process.

Subsection 53(13) allows for extending assistance to workers who are seeking employment. By this time in a claim, the worker may no longer be working for the accident employer. The employer should not be participating in the initial decisions which extend rehabilitation to workers once work at the pre-accident employer is not available.

We've attempted today to focus on specific concerns with respect to re-employment and reinstatement, and although we have a number of concerns about the bill, we fully support the move to a bipartite governance of the system. It's the only way for workers and employers to deal with the necessary policymaking, rehabilitation and re-employment issues at the workplace and to provide excellent and fair compensation for injured workers.

Maybe you'd like to make some comments, Cindy.

Ms Haynes: Okay. As a chief steward at my workplace, I'm often involved in a lot of back-to-work representations for our members, and as well I have a pre-1990 WCB injury which I've had to get accommodation for.

I'd like to specifically talk about one problem at our workplace in which our management supplied ergonomically designed chairs for the work stations for all the officers to use. Within a few months, there were some chairs that had gotten broken. They've gotten a lot of use. They decided to remove all the chairs. They removed all the ergonomically designed chairs and replaced them with plastic lawn chairs. They look exactly like the ones you buy, the white moulded chairs. So all the officers, and some work 12-hour shifts, have had to spend long periods of time on these chairs.

The workers of course are very upset, because they're very uncomfortable. It's causing them problems. There have been work refusals. There have been seven claims filed under WCB for these chairs. The chairs that were removed are being stored in our building. They're still perfectly good, but they're not being used, and management is sticking by the fact that these chairs are suitable. We're still amidst a lot of different processes, appeals and different things, in order to try to get our comfortable ergonomic chairs back.

I think the big thing is that there have been seven members who have lost time, and this is all unnecessary. It's costly for the employer and it's disruptive medically for the worker. The employer's reluctance to replace the chairs has created a poor relationship between the employees and the employer.

I have a personal accommodation that I've had struggles with. I had a 1987 injury, and when I tried to

get accommodation in my workplace, I was told: "We don't have to accommodate you. You're a pre-1990 injury. We don't have to accommodate you under WCB." Of course, my response is, "Right, you don't have to, but you do have to under the Human Rights Code."

I had to file a grievance. I had to file a human rights complaint. I had to temporarily accommodate myself on the appropriate shift, and it was a great difficulty. I did not get accommodation. It was a WCB injury. I did not get any accommodation. I had to fight and fight and fight and finally have got my accommodation.

But that's all unnecessary, and the WCB act does not address those pre-1990 injuries, so we often have to resort to other processes—the Ombudsman, grievances, the Human Rights Code—and it's all unnecessary. WCB should be falling in line with the legislation.

Mr David Winninger (London South): Cindy, you addressed in a very specific way some of the accommodation problems out at Elgin-Middlesex Detention Centre, and Diana mentioned earlier that there could be a more cooperative approach, I guess, between labour and management, which would help to resolve some of these returning-back-to-work issues.

Just before you, you may have heard the American Federation of Grain Millers, Local 154, suggesting that there should be a joint committee designed to reintegrate workers back into the workforce.

Are steps being taken in that regard where either of you are employed or do you see this as something that's going to be relatively difficult to develop, given some of the entrenched attitudes towards this?

Ms Haynes: There have been efforts made, I'm also on the employee relations committee with management. We have attempted to get in the back-to-work rehab meetings that are held between the worker and the rehab case worker and management. We have attempted to get management to agree that every time they have a back-to-work meeting, the person be represented by a union person. Their response is, even though they may have agreed with it, it's up to the individual member if they want representation or not. So they will not agree. They say they would be forcing somebody to have union representation.

But I do think it's very important, because many of the workers who decide to go back without union representation run into a lot of difficulties. They don't know if their rights are being violated, they don't know necessarily what they're entitled to. I think it's very important that the worker has a representative there, someone who is a little bit knowledgeable, so that the employer cannot say, "No, there is no job here for you," because we can bring a lot of ideas into the plan.

Mr Offer: Thank you very much for our presentation. You've indicated your concern with section 51, dealing with the consent of the worker, that if consent is not given, then the worker may possibly be deemed uncooperative. As you will know, we have heard that concern earlier, and I'm wondering if, maybe not now but in the next while, you might share with us how you believe the particular section could be changed in order to meet your

specific concern. My question deals with your concern around subsection 53(10), which basically would exclude the employer from vocational rehab if there has been some finding that the employer, somewhere in the process, has been deemed uncooperative.

I would've thought that we would always be wanting to try to get the employer, the injured worker, WCB, the physicians all working together to try to deal with a vocational rehab type of program, and to exclude the employer from that when the employer wants to be part of it seems a little bit difficult for me to understand. I'm wondering if you might want to clarify that position, and if it is to exclude the employer, when that would take place, in your opinion.

Ms Clarke: I think that the key words here are "uncooperative employer." Where the employer and the worker are working with the board and are attempting to do return to work, there is no problem. That's not an uncooperative employer.

What we're really addressing are employers who—and we can say in the unorganized sector particularly—have absolutely refused to come to the table, and many of our appeals for re-employment are around firing. They're literally fired. The employer simply does not want to be part of it. They don't want to offer the job. They have a ruling from the re-employment branch saying they're not willing to cooperate. They have basically walked away from it.

At that point, where they've had an obligation and the board has ruled on it, and we've even gone to the hearing, where the right of appeal is there, to me, that's uncooperative. At that point, they've lost their right.

In all honesty, if the employer says, "Look, we've really tried and there isn't anything there," that's not an uncooperative employer.

Our problem is with the employers who walked away from the process and come back two years later, and the person is in the middle of their last year of a college program or they've got a new profession, everything's been agreed to, the board has monitored this very clearly, they didn't get the rehab without fighting for it in the first place, and retraining, and then all of a sudden the employer walks in and says, "I've got a job for you for six weeks," and the board opens the file up and says: "Maybe you shouldn't go to school any more. We're cancelling it."

As far as I'm concerned, what a good rehabilitation program is, particularly with the employer we represent, which is the Ontario government, in dealing with it, is, "There's a job for somebody; let's figure out about retraining them and getting them into a job that may be helpful, given their disability." Our position is just with employers who just will not work with us.

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Mrs Witmer: Thank you very much for your presentation. I don't have any further questions, but I did appreciate your explanation that you just gave.

The Vice-Chair: On behalf of the committee, I'd like to thank the Ontario Public Service Employees Union, Local 528, for their presentation today.

GRAHAM SMITH

The Vice-Chair: I now call Graham Smith and John Gallant. Welcome to the committee.

Mr Graham Smith: Thank you, Mr Chairman, and members of the committee. My name is Graham Smith and here with me today on my left is Mr John Gallant. While we are union members, we are here as individuals.

Again, thank you for allowing me the opportunity to address you today with respect to the proposed changes in the Workers' Compensation Act. One of the most serious problems faced by not just the WCB administrators but also all of the participants, including employers, workers and the public at large, is the immense size of the unfunded liability. Any reduction in unfunded liability should be accomplished not on the backs of injured workers but through accident prevention and an intense focus on re-employment. I think the intent of the bill is to do just that; however, it comes up a bit short by de-indexing benefits to injured workers.

I understand the unfunded liability is still increasing, but at a slower growth rate, and this is, and should be, unacceptable to everyone. I know it may be overly simplistic to say that, but if every time I made a mortgage payment my principle amount increased rather than decreased, it would not be long before I was in serious financial trouble. The thrust, therefore, of this committee's examination and that of the royal commission subsequent to this committee, should be to get workers back to work and provide a safer working environment.

In this regard there remains a very large loophole with respect to partially disabled workers in the construction sector, the ICI sector. In the case where trade unions have exclusive right to refer members to work, in the case of unions which operate in a hiring hall capacity, I would refer this committee to a royal commission report completed in December 1974 by His Honour Judge Waisberg entitled Report of the Royal Commission on Certain Sectors of the Building Industry. What the report clearly spelled out is that in this particular industry the primary and enduring relationship was not between the employers and employees; rather, it was between the employee/union member and the trade union, which held the exclusive right to refer members to work.

In the highly competitive atmosphere between different trades trying to increase their jurisdiction, there exists the all-too-often-realized problem of trade unions being reluctant to send partially disabled members to employers. In fact, my particular trade union has a policy it refers to as "healthy competition" that allows employers in our sector to request 100% of the men they hire on the job, which is diametrically opposed to the exclusive right of the union to refer all members.

Basically what they're doing is, they're not living up to their responsibilities. Given the transitory nature of the construction sector, one's accident employer may not operate another job site in the geographical area of our collective agreement for years, and the partially disabled worker's only recourse is to other employers who, given the right to request by name 100% of their workforce, are somewhat less than enthusiastic about hiring partially disabled workers. This leads to massive drains on the

vocational rehabilitation funds for injuries that, but for failure of the trade unions to enforce, would not be of such a serious nature as to cause one to change one's livelihood, which requires such extensive vocational rehabilitation services.

I believe that the extent of this problem should be analysed in great detail with a view to trying to assist, if possible, or mandate, if necessary, the local unions having contractual rights of exclusive referral. In other words, the hiring halls keep pools of highly skilled workers for quick referral, thereby avoiding the need of the employers to quickly put together skilled help or retain well-paid guys to sit around and do nothing for periods when they don't need them. It's beneficial to both the employers and to the trade union members in that you have a pool of highly skilled workers who you don't have to keep on payroll in the times when there's not much work, and yet when you need those workers, you can call on them within a day and you have the necessary men at the time.

In short, it would go a long way to reducing the unfunded liability if employers were prohibited from bypassing partially disabled workers by a process of—and this is the key. It's not so much that they're rejecting partially disabled workers as they they're simply not selecting partially disabled workers, and all of this with the blessing of some of the trade unions as part of what they refer to, again, as "healthy competition."

If I can, I'd just like to go on record with some of my recommendations. I would say at this time that many, many of my concerns have been addressed by previous speakers who have said it a lot better than I could. I'm not in favour of the introduction of the deindexing formula, the Friedland formula. I've worked out the figures a little bit and it seems to me that there's no protection whatsoever once the consumer price index exceeds 6.667%. You're capped at that point, so if the inflation rate is 7%, 8%, 9%, 10%, injured workers eat that.

The \$200-a-month increase to workers is welcome but should be expanded to cover all injured workers, without specifically leaving any out. Obviously, they're injured workers; they're no different from other injured workers.

When establishing the merit and rating programs for employers—now, I heard this from a number of employers' delegations that have come before you that were televised in Toronto that seemed to trumpet the fact that their accident rates had gone down. I just wondered if they were taking into account the fact of the globalization and the downsizing and whether or not the number of workers they actually employ would offset the number of accidents that are being reported on a percentage basis and if that wasn't likely the reason for the reduction in injuries as reported, not to mention some of the other reasons that I've heard from other delegations. I won't go into all of them.

I believe the new mediation policy, while well-intentioned, will cause just the opposite with respect to the unfunded liability. What you're going to get are answers quickly, and you're going to find there will be a lot more people who object, who appeal. I believe it will turn into

a morass of appeals. There might be a better way; I don't know what it is. That may be something to refer to the royal commission. Perhaps it wouldn't be the best idea to include it in this particular legislation.

1510

The new ability for the board to penalize non-cooperative employers with respect to vocational rehabilitation services is a balanced and long overdue approach, and I believe this change is especially relevant to the construction industry.

With respect to the medical information, I'd also weigh in that it should not include any diagnostic information, and if I could, I'd like to add my own personal reference.

When I went to the Ontario Labour Relations Board with an application against my trade union for unfair representation, three years after my accident the accident employer suddenly applied for—I believe it's the secondary enhancement fund. There was no adverse decision in my case; they couldn't get my files. When they applied for the secondary enhancement fund, my file suddenly appeared at my doorstep, followed days later by a subpoena from the trade union for my worker's compensation file.

So you should be very careful as to what you put on the form you wish the doctor to fill out. It could be abused; there's potential for abuse. It should deal specifically with back to work, the worker's abilities, limitations, so on and so forth.

I believe that the committee should recommend to the royal commission that they look in depth to the re-employing of partially disabled workers—and I apologize for the spelling error in the brief; that does say "partially disabled workers"—in the construction sector. Trade unions that operate hiring hall referral lists should be included in that they represent a unique situation. Unscrupulous trade unions that have, by virtue of their collective agreements, exclusive right to refer their members should be mandated to institute a policy with respect to partially disabled members.

Now, this I put to the business manager of my local union on the stand, and I asked him, "What is your policy for disabled workers?" He said, "I don't have one," and that basically is the attitude in this situation. Given the transitory nature of the industry, the designated employers group, as a whole, should be deemed the accident employer. That way a disabled worker would have an opportunity to go back to work.

Again, I thank you for the opportunity to address this committee and I look forward to answering any questions you may have.

The Acting Chair: Thank you. Does your colleague wish to say anything?

Mr Smith: Not at this time.

The Acting Chair: Okay. There's approximately a short two minutes each. You start off, Mr Mahoney.

Mr Mahoney: We've had representatives of the Labourers' International—if you watched it on television you might have seen them—and the Council of Ontario Construction Associations' representatives as well coming before us. The labourers made a recommendation that a

bipartite committee be struck to advise the board on areas around construction and injuries and return to work and all of the issues that are very special and unique in the construction industry. The labourers put forth the idea; COCA, in response to a question, said that they would endorse such a proposal. So you'd have an actual structured committee, separate from the rest and dealing specifically with construction issues.

Do you have any comments on that type of process and whether or not you think it would work?

Mr Smith: I would hope that any specific committee would include not just—can it be tripartite? Can we also include the workers themselves? Oftentimes not all the workers are represented by the union officials, and I'm afraid that the same thing will happen perhaps as what happened with Bill 80 as far as the ICI sector is concerned. Special interests will come in and look after their own, and they're not really looking after—

Mr Mahoney: A good analogy, particularly on Bill 80. We'll take that into account.

Although you're here as individuals I guess you're coming from a labour perspective, but you've identified the problems with the unfunded liability as being real and this has to be addressed. Your analogy of the mortgage is a perfect one: You just keep on making payments but the mortgage goes up; it wouldn't take long before they'd be moving you out of the house. The same analogy can apply here. But you've also recommended that everybody should get the \$200 a month and some other things that drive the costs. Do you have in a general way a statement that might help the committee in determining how those costs should be funded?

Mr Smith: Yes, sir. I've tried to address it as clearly as I can and you'll realize it's not easy to be here.

Mr Mahoney: No, you're doing just fine.

Mr Smith: My suggestion is, as part of the royal commission inquiry, one of the things that should be addressed is exactly the trade unions which have hiring hall systems, because what's happening is, even though they're mandated under the Labour Relations Act to fairly refer and fairly represent, it's not happening. What they're doing is competing with other trade unions. They're saying, "We want to get a little bit more of this one's jurisdiction and we'll supply nothing but the 24-year-old guys with welding tickets and running shoes," if I may, and they're leaving out the disabled and partially disabled workers. If a company can request 100% of the guys on the job, they're going to go after the best they can, and they do. What it does is, it leaves these guys to go back to workers' compensation and say, "I need vocational rehab" and you're stuck for years with these guys, giving them another livelihood because they have a repetitive strain injury, rather than being allowed to go back on the job site and be accommodated. There's lots of jobs these guys can do. They're not getting them.

Mrs Witmer: Thank you very much for your presentation. I think it's been pointed out that there appears to be some need to set up an independent body to handle the construction industry, but I think you've made a good point as well. You refer to the fact that sometimes the

unions don't necessarily represent all of the employees and I guess, just to take that a little further, that's one concern I would have with the bipartite nature of the board of directors as well for the WCB, because oftentimes the non-unionized worker is not represented either. There are unique interests.

I want to get back to what you've said here about any form that is drawn up, I think you say, to include medical data, should not be made available to non-cooperative employers. How do you determine who's a non-cooperative employer and who's cooperative?

Mr Smith: A hard one. An employer who has not participated in bringing the worker back to work. For instance, in my own personal case my accident employer was contacted by the Workers' Compensation Board. They said they had no light duties. Well, they've written themselves out of any prerogatives at that point, I believe.

Mrs Witmer: But I guess that's a challenge we face: What criteria would you use to establish which employers would get the medical data and information and which employers would not? It's just more bureaucracy and more process and that's some of the difficulties, I guess, with WCB already, that it's not being managed as efficiently and effectively as possible. I appreciate your concern, but I'm not sure how you would achieve that goal.

Mr Winninger: I was intrigued with your point about the merit and rating system for employers that would essentially reward employers that reduce the frequency of workplace accidents. If I understood your point correctly, it was this: There may be a reduction in the frequency of workplace accidents not because a number of workplace safety and health hazards have been removed, or because there's better training of workers and managers, but simply because there may be a reduction in the size of the workforce. Is that correct?

Mr Smith: That's correct.

Mr Winninger: So would it make sense to you that there be some kind of weighing of the size of the workforce against the reduction in the frequency of workplace accidents? Would that be what you're looking for there, some kind of weighing factor?

Mr Smith: Yes, sir, and I believe it would be rather easy to do. As the compensation rate is based on per-\$100 payroll, that payroll figure is what you could use to base whether or not—if they've got a much smaller payroll now, perhaps that reflects their accident rate going down.

Mr Winninger: That makes a lot of sense to me. Thank you.

The Acting Chair: On behalf of the committee, Mr Smith, and Mr Gallant, I'd like to thank you for coming out today and helping us in these hearings. You can listen in later on; you've already seen us on TV. I appreciate your taking the time to listen in.

1520

CANADIAN AUTO WORKERS, LOCAL 444

Mr Ken Lewenza: My name's Ken Lewenza. I'm the president of Local 444, CAW, representing Chrysler workers in Windsor and marine division fish plant

workers in the Leamington area. With me is Gary Parent, who's the financial secretary of Local 444, and Red Wilson, the vice-president of Local 444. I may add, in terms of introduction, both fellows have over 50 years experience between the both of them on dealing with compensation, and I'm talking literally thousands of workers first hand and probably a couple of thousand more who just come into our office and seek advice from either one of them at any particular time. So our brief today will be dealing with a lot of what we would consider the human element problems as we relate to the problems in the workplace as it relates to injured workers.

For the purpose of time—you'll see in your brochures there, if you'd go to the insert, the yellow page—we will just deal with the sections that we feel we have particular problems with and go through them. Hopefully, it'll generate some positive discussion and concern because, as I've indicated, both of these fellows have a tremendous amount of experience and knowledge and firsthand information. Gary, go ahead.

Mr Gary Parent: I want to make the clarification that it's not 50 years of age, at least at this side of the table.

Mr Dave Wilson: I can't say the same thing.

Mr Parent: As Brother Lewenza has indicated, we'll try to go through the brief section by section on sections that we disagree with as a local union and actually as a total CAW union.

Subsection (7.1): Our concern is that it relates to this section is that if there's a cost-sharing agreement among two or more boards pertaining to claims for certain occupational diseases such as silicosis or hearing loss, this proposed section would prohibit such agreements. We interpret this section to mean that if a worker receives a meagre pension for the above industrial diseases from one province but the bulk of his or her exposure was in Ontario, this proposal would appear to prohibit the payment of any compensation from Ontario. As well, receipt of CPP or a private disability plan could be affected as agreements among the various boards cannot override a statutory prohibition. We therefore recommend that this proposal be deleted.

Section 43: This section deals with deeming, which is a practice by which the board invents a phantom job, then deducts this from the worker's future earning loss pension calculation. Great injustices have taken place since this practice has been going on since Bill 162. As a result, we recommend that section 43 be amended to prohibit the practice of deeming. We feel that only if a worker turns down a real job and not an imaginary job should this be considered in the calculation of future earning loss.

Section 51: We feel this proposal comes from the employers who seek to frustrate those workers with claims and interfere with, not help, vocational rehabilitation efforts. I heard just a few submissions here this afternoon and that clearly comes out in those few presentations that I heard. I'm sure this committee has heard many presentations on the whole question of employers wanting to further circumvent the system rather than help

their injured workers. Subsection (3) requires the board to pay for medical reports, so the employers can demand such reports at will and they have no obligation to pay for them. That's under the proposed recommendation. We strongly recommend that the proposed amendments to section 51 be deleted.

Section 53: This section has been rewritten to provide employers with board assistance for vocational rehabilitation. Employers under current legislation have an obligation to provide vocational rehabilitation assistance to help injured workers, and it is the board's role to insist that employers fulfil their obligations.

I state to this committee candidly and uncategorically that it is not happening in this province that employers are accommodating injured workers to the degree that they have the legal rights now of the present legislation to do so. There's no teeth in the current legislation to force employers to accommodate injured workers in this province. There are thousands of injured workers who are thus being ill-treated by the current legislation, let alone the amendments that are in Bill 165.

We therefore oppose the addition of the word "employer" to subsections (1), (3) and (9) and recommend it be deleted as well as from subsections 2.1 and (10). In fact, we recommend subsection (10) be rewritten as follows: "If the worker requires a vocational rehabilitation program, the worker, in consultation with the union if there is one, and the board shall design the program and the board shall provide it."

Section 54: It is apparent that the current legislation is not working on behalf of injured workers, and we feel that more authority to exercise this legislation should be included in the proposed legislation whereby the board can order an employer to fulfil its obligation to the worker as it pertains to vocational rehab, and for the reasons that I stated earlier.

Section 56: We do not feel the proposals in this section truly reflect bipartite because of the two public-interest spots on the board and feel that true bipartism should mean that in addition to what has been proposed, the two public spots should reflect an additional union and employer appointee.

Section 58: We are completely opposed to the proposal in subsection (1) requiring the board of directors to act in a financially responsible and accountable manner in exercising its powers and performing its duties. We recommend in the strongest possible terms that the proposed section 58(1) be deleted, as we believe it is the directors' responsibility to ensure that the system is administered fairly and to ensure that injured workers receive compensation benefits in a just manner and not strictly on the financial viability of the programs or the funding.

Subsection 63(2): Because we're opposed to subsection 51(2), we are also opposed to subsection 63(2). We feel that if subsection 51(2) is deleted, then so should this subsection. If, however, subsection 51(2) becomes law, then subsection 63(2) is needed.

Clause 65(3)(h): Because we feel that far more workers fall through the cracks than is realized, we recommend

that this clause be amended to add the phrase, "and addressing any undercompensation of benefits provided under this act."

Sections 72 and 72.1: We are very concerned about using mediation as a means of settling all disputes rather than dealing issue by issue as is currently done through the appeal procedure.

Section 95: We do not support the change from the existing system in which the Ministry of Labour determines the IDSP budget to that of the board determining the ODSP budget. The reason for this is simple: Just as the board should be at arm's length from the ministry, so should the ODSP be at arm's length from the board, and just as the offices of the workers and employer adviser remain separate.

Subsection 95(8): We recommend a new clause be added which would read: "(e) to make decisions about descriptions of diseases and processes in schedules 3 and 4 which shall become regulation by order of the Lieutenant Governor in Council within two months of the decision."

Duplication and waste should be eliminated, the ODSP should make decisions about the occupational disease schedules and the board should implement them.

I'll ask Red to continue on.

1530

Mr Dave Wilson: Subsections 103(6) and (8): Although there were no specific recommendations on these two sections, we would like to express our opposition to these sections and recommend that they be deleted and the board use a flat-rate assessment system. A flat-rate system would do several things. First, it would dramatically decrease board administration costs which are high as a result of experience rating and the constant tinkering with the assessment rate groups. I may add that this at the present time has added \$150 million to the unfunded liability because of the off balance.

Subsection 147(14): Although we agree with the proposed \$200 increase in pension to pre-Bill 162 pensioners, we are not in agreement with it being assessed to a person receiving a subsection 147(4) supplement. As you may or may not be aware, there are a number of workers who were made ineligible for this supplement due to their age—65 as of July 26, 1989—and yet they too are suffering from inadequate pensions just as the younger workers are.

We feel that these injured workers should be allowed to make application and be paid the same \$200 as those workers in receipt of a permanent partial disability award, even under subsection 43(1) of the pre-1985 act.

Unfunded liability, subsection 132(2): This section is not included in Bill 165 either, but we would be remiss if we did not make comment on this issue. We feel the controversy surrounding this section has been over-exaggerated when we look at the fact that at present WCB is 37% funded. By contrast, in 1983, the WCB was 32% fully funded. The act was not eroded in 1983. In fact, there were improvements to the act in 1985, including the creation of the Worker's Compensation Appeals Tribunal and the introduction of full indexing.

We believe the employers are using the unfunded liability in the same way they used the federal deficit: as a way to frighten people into thinking that social programs must be forfeited. We feel the cause of concern over the unfunded liability was created by those corporations that have not paid their fair share of assessments in the past to cover future obligations.

Are the employers who are complaining loud and long about the current unfunded liability proposing to pay more money towards the board's fund to ensure full funding? No, of course not. They rather seek to cut pensions and other entitlements through the Friedland formula which erodes indexing.

Section 139: On taking the above into consideration, we recommend that the provisions of section 139 be deleted and be replaced with a requirement that all employers in the province of Ontario be covered by workers' compensation.

Subsection 148(1): We, as a labour movement, have made submissions, we have lobbied politicians like yourselves and after decades of this lobbying, we finally won full indexing in 1985. The proposed Friedland formula proposes to erode pension indexing drastically. We feel the cost savings to the board by using the Friedland formula will come directly from the pockets of injured workers in this province who can least afford it. We recommend that the Friedland formula be scrapped and that the present full indexing formula of subsection 148(1) be retained.

Universal disability: We cannot let an opportunity go by to state that our union supports in the strongest possible terms a universal disability system. We want to ensure that the government fully supports the royal commission's consideration of this issue since terms of reference for the royal commission were not explicit.

Committee members, were it not for the vision of trade unionists and progressive forces throughout Canada during the Depression, in spite of adversity more difficult than the present neoconservative agenda, we would never have achieved unemployment insurance, family allowance and old age pensions. We need the Ontario royal commission to thoughtfully consider how to introduce a universal disability plan.

In conclusion, we have covered a number of concerns as they pertain to the proposed legislation and also concerns on issues that were not covered in the proposed legislation which we are asking your committee to recommend as legislation.

The only way we feel a true cost savings will materialize is if there are safer plants through improved health and safety legislation and not at the expense of cutting pension indexing or other measures we have touched on in our submissions.

We respectfully ask this committee to consider our recommendations and incorporate them into Bill 165. We would then look forward to participating in a royal commission to study ways in which we should proceed in rebuilding the system so it will reflect the needs of our society in the future.

Mr Lewenza: On behalf of Local 444, we want to

thank the committee for giving us this opportunity to give this presentation.

Mrs Witmer: Well, I can see sometimes why progress isn't made at the table. I don't see a lot of effort made here to work with the employer community in resolving the situation, and that is to try to ensure that injured workers get back to work as quickly as possible. I find this is somewhat confrontational and I'm really disappointed that you don't acknowledge the fact that there is a need to be financially responsible and accountable. You say that in section 58, "We are completely opposed...to requiring the board of directors to act 'in a financially responsible and accountable manner.'" I don't know how you can say that. Are you not concerned that there be money available in the future to pay for injured workers, to pay for their benefits?

Mr Lewenza: I think if you go further into the report, it tells you how to do that by having the employers who do not pay pay their share.

Mrs Witmer: I would suggest to you that the employers did in 1985 decide that they wanted to reduce the unfunded liability. They took hits three years each of 15% and 10% increases. They have certainly been paying their fair share, and for you to suggest that that's not happening right now—I think we all have to act in a responsible manner. We only have to take a look at New Zealand or Confederation Life to see what can happen if you don't act in a financially responsible manner.

Mr Parent: I guess, Ms Witmer, what we're referring to primarily, and what Brother Lewenza alluded to, is that there are a lot of employers that are not paying their premiums, their assessments, currently. There are over 20,000 employers in this province today that are legislated to pay premiums and are not. I dare say that if you had them pay, that would obviously help the unfunded liability.

It was also the employers that went to the government before this government that asked for a reduction of benefits—or assessments, I should say—and it was maybe because of that allowance at that time on the reduction of those assessments that has led to the unfunded liability.

I mean, let's be candid. The unfunded liability phantom and the scare tactics that have been played out there, mostly by the employers in this province—I'm not saying that the unfunded liability is real or unreal, but the facts are that the unfunded liability only comes into play if the whole system falls flat, the whole province is not working, if everyone had to be paid their current benefits and pensions. That's when the unfunded liability.

I dare say that I don't think you and I in our lifetime, and I don't think in our children's lifetime, will see the whole question of this province going flat on its butt. I think the closest that we got is over the last several years, and I think that right now we are on the rebound and that we will see this province grow and continue to grow in the future.

The Vice-Chair: Thank you.

Mrs Witmer: Well, our debt is growing too.

Mr Ferguson: Thank you for appearing today. Just on that question, it's been put in very practical terms of

somebody paying a \$100,000 mortgage with \$37,000 in the bank. If people have difficulty relating to billions of dollars, I think that's a pretty fair and pretty safe analogy to use, that most people wouldn't suggest they're in difficulty.

But my question is this. You know what the government bill contains, obviously. You've made a number of very positive recommendations. I want to tell you today that what is before you is not etched in granite and that's why we're touring the province. We're listening to a number of concerns.

What's not often being said is what the opposition parties are telling the government. In a rather originally titled report called *Back to the Future*, the Liberals have said two things. They've said, number one, implement the Friedland formula and, number two, they've also suggested that we ought to freeze employers' premiums immediately.

The Conservative Party, on the other hand, has taken a different stand on the whole question of compensation. They've suggested that we ought to take injured workers' benefits from 90% down to 80% of net earnings immediately. The Conservatives have also suggested that we ought to look at imposing a 72-hour cooling-off period or waiting period from the time an accident occurs to the time somebody would be entitled to benefits. The third suggestion they've put forth is that we ought to be looking at some sort of employer-worker cofunded agreement to cofund the Workers' Compensation Board, much the same as other programs that operate.

I'm wondering if you would have any comments on those proposals.

1540

Mrs Witmer: Thank you for getting that on the table.

Mr Mahoney: There's a movie coming out.

Mr Parent: When you look at the whole question of the Friedland formula and what you talked about, you're absolutely right; I mean the mortgage thing. When you talk about—and I lost my train of thought on one of the points that you raised, Mr Ferguson.

Interjection.

Mr Parent: Freezing the employers' premiums. As I said to Ms Witmer on the whole question of the employers in this province who are not paying, how do we get them to start paying? What about the employers who are not scheduled to pay? I'm talking now of the banks, I'm talking about the credit unions, I'm talking about the insurance companies, those who are not currently under the current legislation to pay a premium. If we had those employers also paying into the system, I dare say that you might have an idea of some of the present assessments being lowered, believe it or not, as a result of the employers in this province paying their fair share. But there's a great majority of employers in this province who are not paying their fair share or are not paying any of their share. I think it's the obligation and the responsibility of the government and the workers' compensation to make legislation that's going to force employers to pay their fair share in this particular area.

Mr Mahoney: I'm delighted that Mr Ferguson wants

to quote from my report, and he's absolutely right. The difference is that we recommend the implementation of Friedland, but we didn't spend the money. That's the difference.

The other thing is, we clearly agree with you on the 20,000 employers. Whether or not it's 20,000, 22,000, 18,000, I don't know, but we have said in our report that we think that's an area that the government should aggressively go after because that has been identified as a lack of revenue for the WCB. So I support you on that.

But I have counted up with this presentation, and I really appreciate you taking the time to submit it in such detail, a minimum of 17 amendments that you require. If there are 17 amendments to this bill, sir, I will be absolutely shocked. Experience would indicate that the bill is going to go through in its present form with maybe some tinkering, but there will not be 17 amendments to this legislation.

My question to you is, if your amendments are not put into the bill, would you agree with me that the bill should be withdrawn and rewritten?

Mr Parent: Absolutely not, because if you look on the other side of the yellow page, there are things that we do agree with in this particular bill and we are pointing out some concerns that we have on the other side of the ledger that we want this committee to review and, hopefully, rather than tinkering, to implement.

Mr Hope: Tell them what you said about Bill 162.

The Vice-Chair: Thank you, Mr Hope. On behalf of this committee, I'd like to thank the Canadian Auto Workers, Local 444, for their presentation this afternoon.

TOM DOOL

SANDRA SAFRAN

The Vice-Chair: I call the London and District Construction Association. Good afternoon and welcome.

Mr Tom Dool: Mr Chairman, members of the committee, allow me to offer our appreciation for giving us this chance to talk to you today. My name is Tom Dool. I'm an employer representative of the construction industry. With me are Ms Sandra Safran of M. M. Dillon Co Ltd, Dave Johnson of Cuddy Food Products, and Bob Dobbs of the Ford Motor Co of Canada.

Although this group supports the positions put forward previously by the ECWC, the Employers' Council on Workers' Compensation, we'd like to spend our time today narrowing on one issue only, that of experience rating programs, CAD-7 and NEER. I will speak to the construction industry program CAD-7 and Ms Safran will speak to the NEER program.

Bill 165 proposes to amend section 103 of the act by adding very, very subjective criteria to the formula which determines whether an employer will receive a surcharge or rebate on his premiums. Currently the construction industry operates under the CAD-7 program, which has been in existence for 10 years and in our minds has been the most successful WCB program to date. CAD-7 is performance-based. The fewer lost-time injuries and the less the accident severity, the greater the opportunity for rebate of premium. Since the introduction of CAD-7, the performance of the construction industry in the health and

safety area has been absolutely remarkable.

The frequency of injury, lost-time injuries per 100 workers—I would note to the gentleman over here, Mr Winninger, who referred to a decrease in workforce, that we're talking frequencies here, we're not talking total numbers. That was a pretty poor shot as far as I'm concerned. That frequency has decreased from 1987 to 1993 from 7.1 per 100 workers to less than 3 per 100 workers, a decrease of 62%. Indeed, the program was so successful that just a few short years ago there was an off balance of rebate over surcharge of almost \$40 million. To correct this—and, I might add, without employer opposition—weighting within the formula was changed and the current off balance is being reduced and will approach a neutral position.

The formula is based on two areas: LTI frequency and, secondly, accident costs, which can be related to severity. Statistics show that the LTI frequency has dropped remarkably. And in the aspect of accident cost, employers are given the incentive of rebates by getting employees back to work through modified work plans, work-sharing etc, thus reducing their accident cost. These rebates they receive are not just cash in the bank either. That money goes back into the safety programs and practices that are used to create those better safety conditions.

In the face of this successful performance-based program, the writers of Bill 165 wish to alter the existing formula by adding these subjective criteria. Well, if something is working, don't fix it. I'm sure that's something you'll hear time and time again as you go through your hearings.

It's proposed that surcharges and rebates be also based on the consideration of (a) the employer's health and safety practices and programs for the reduction of injuries and disease, (b) the employer's vocational rehabilitation practices and programs, (c) the employer's practices and programs to assist in the return to work of injured employees, and (d) such other matters that the board considers appropriate. I hope my voice underlines "practices and programs" all the way through there, because that's what we're referring to as the subjective criteria. There are some very definite problems and concerns attached to these criteria.

First, they're already covered, with the exception of item (d), under the Workers' Compensation Act and under the Occupational Health and Safety Act. Application under CAD-7 will probably create a double jeopardy scenario.

Second, we've already pointed out that items (a) and (c), health and safety and re-entry programs, are currently addressed by the incentives offered in CAD-7.

Third, I'd point out that the majority—I mean at least 80%, okay?—of construction employers employ less than five employees and work on projects of less than six weeks' duration. It's almost impossible for these firms to have rehab programs in place. On the other hand, these employers do everything they can possibly do to re-employ their injured workers.

Fourth, the added criteria are entirely subjective. Who will do the consideration of these criteria, and at what

cost? How timely will these considerations be in terms of an employer and an employee? Who in fact is really capable of making these considerations? Currently, a formula is used; any technician can apply the formula. When the criteria become subjective and auditing is required, politics, bias and opinion enter the calculation. These will destroy the integrity of the program.

Fifth, in that the criteria are subjective, the number of appeals will skyrocket out of proportion, and that will further tie up the system.

In summary, the 800-plus employers and the 18,000-plus employees of the construction industry in this area ask you to consider the above arguments and recommend that the CAD-7 program be unchanged by Bill 165.

Mr Chairman, ladies and gentlemen, Ms Safran will address the NEER program.

1550

Ms Sandra Safran: I'd like to speak on behalf of a group of employers in the manufacturing, health care, and technical and human resources consulting services sectors in this geographic area. Among us, we employ approximately 12,000 workers at an annual payroll of about \$400 million. Our combined annual WCB assessments are approximately \$12 million.

The experience rating program, particularly NEER, is a program that promotes effective health and safety practices through a system of assessments, refunds and surcharges which are based on an employer's annual accident record. The current legislation proposes to withdraw this legislative authority for the program and replace it with one that substitutes subjective assessments of health and safety practices and programs for the performance-based criteria of current experience rating programs.

The current experience rating programs have been found to work well. They receive wide support from business and are the last opportunity remaining for business to reduce costs through positive performance-based initiatives. The goals of these programs are to reduce incidents of injury and to shorten the periods of time off for injured workers. They've enjoyed a high degree of success.

WCB itself has promoted the programs as an excellent method to accomplish its mandate. I'd like to quote from a WCB brochure entitled NEER: An Employer's Guide to New Experimental Experience Rating. Employers believe this statement.

"The new experimental experience rating, NEER, plan plays a major role in the way the board accomplishes its overall mandate. By providing the financial incentive of reduced assessments, NEER encourages employers to invest time and money in making your workplace safer—therefore reducing injuries."

It goes on to say:

"NEER also helps promote a fairer distribution of the assessment burden. Without experience rating, individual companies with a good safety record and those with a poor record within a particular industry rate group pay the same assessment premium. But under NEER, a company with a good record relative to the industry

average gets a refund on its initial assessment; those with a poor record relative to the average pay a surcharge."

We believe this. It is our position that by reorganizing the rate groups and adopting policy which will see all employers in Ontario experience-rated, the board has been striving to meet the objectives. NEER, while not perfect, is working. Accident frequency rates have declined steadily since 1988. Other speakers this afternoon have quoted some of those.

According to the Monthly Monitor put out by the WCB in July 1994, the number of new claims per day has declined 32.3% from 1988 to 1993. Total claims declined by 9,300 employees during the period 1992 to 1993. Even taking into account some differences in the total number of employers, that's more than 9,300 employees who were not sick or injured during that period. Employers and their employees have taken their health and safety responsibilities seriously and have shown significant success.

Bill 165 proposes that the board may establish experience and merit rating programs to encourage employers to reduce injuries. It moves away from the base previously legislated. "In determining whether a refund is available or the amount of a surcharge under a program, the board shall consider:

"(a) the health and safety practices and other programs of an employer to reduce injuries and occupational diseases;

"(b) vocational rehabilitation practices and programs of the employer;

"(c) practices and programs of the employer to assist workers to return to work under section 54; or," and I'd like to stress this last item:

"(d) such other matters as the board considers appropriate."

Ladies and gentlemen, I'd like to just point to the motivational forces that are at work here. Whether these are described in psychological terms or as general response patterns, it's well known that humans respond well to systems that offer clear rewards and disincentives. NEER is such a system. It encourages employers to provide an environment that promotes safety and health. It functions similarly to insurance programs, which employers can also understand and can appreciate. It should be maintained.

NEER and CAD-7 measure the measurable. They look at the bottom line, not the process to achieve it. The processes to achieve a good result might be subtle and could include intangibles such as how an employer or supervisor behaves or the corporate culture that has grown in an organization. They might not be visible to an outside auditor.

The experience rating system will be drastically altered as a result of additional penalties assigned to companies lacking politically correct programs in the area of occupational health and safety and vocational rehabilitation and return-to-work programs. We don't measure Olympic athletes by how hard they try or how well-designed their training programs are. We reward results, not processes. In the business world, an organization with poor results

may have health and safety programs that appear to be excellent, but they don't work because of poor internal motivation, poor supervision, lack of appropriate safeguards or lack of follow-up for injured workers. The proposed changes will shift the emphasis of experience rating from objective measures to a subjective program and obscure a fundamentally impartial system with a plan which currently is ill-defined, variable and subject to multiple regional interpretation.

We're concerned that the text of the proposed section 103.1 is an unnecessary and detrimental addition to the act. The text is vague and subject to a wide range of possible policy tangents which might distort the application beyond any original intent.

Subsection 103.1(2) begins with the obligatory word "shall." However, the last word in that clause (2)(c) is "or," coupled with a catch-all wording that gives the board the freedom to consider any or all of the clauses under the subsection. It seems to create the peculiar situation where the board is obligated to do whatever they want in the application of surcharges and rebates. There are no objective criteria.

I'd like to summarize by saying that the experience systems currently in place are entirely results-driven. The nature of the rating formulas themselves direct employers to follow responsible health and safety and return-to-work practices. They make economic sense, they make human sense. The proposed system is not only arbitrary but also caters to the quantity and range of programs and practices instead of the quality.

NEER and CAD programs have had a major impact on the reduction of accident statistics in Ontario, and our message to you today is to remove experience rating from Bill 165 and let the current system continue to achieve results.

Thank you very much for the opportunity to address this committee.

The Vice-Chair: Thank you. Ms Murdock, you have about a minute.

Ms Murdock: It's not enough. I'm presuming you have seen the amendment that has been made, since most of the employer groups have.

Ms Saffran: Yes, we have.

Ms Murdock: I would point out that on the second-last page, "Bill 165 Proposals for NEER," an important word has been left out of that. I think it's key, actually, in terms of legislative drafting and interpretation, because the word "variation" should be there between subsection (1) and subsection (2).

The reason I say that—since I guess I won't get a chance to ask the question, but I wanted you to understand—is that the subsection (1) there is the maintenance of the NEER program in terms of accident rate and frequency and the accident cost to the employer in terms of our amendment. Then the variation of the amendment is the exact wording out of the PLMAC agreement, which I think doesn't go to the good employers. The good employers, which are the employers who already implement those kinds of programs and are already working with the board and with the employees, will never

probably ever come to that. It's the ones that don't, and I think that's important and I would like your opinion.

Mr Dool: Well, under CAD-7, and I'll refer to CAD-7 alone, Ms Murdock, most of our employers in construction are too small to meet those criteria. Therefore, they can have superb performance results, in other words, accident records that go back five years with nil frequency, and yet under this they could actually be penalized and their rebates would be reduced.

1600

Ms Murdock: But you'd look at the first part rather than the second. You'd look at the first first, and then, and only then, you would—

Mr Dool: Then you look at the second. Right.

Ms Murdock: Only if the first is not—

The Vice-Chair: Thank you, Ms Murdock.

Mr Offer: I'd like to thank you for your presentation. I think the interaction between yourself and Ms Murdock was quite instructive. It is clear that the amendment the government has produced is nothing less than a rewording of the section that now appears. They tried to do something. The effect is absolutely the same.

The question that we have is, based on the section that's in the act or the proposed amendment, which has the same effect as the section in the act, is there now going to be an extra cost to employers, either under CAD-7 or whatever, who in terms of their assessment now have good work records where the results are that there are no injuries?

Mr Dool: In response again to CAD-7, that is a possibility, and there's no definition, there's no way we can look upon it as a clear-cut separation, if you will, under this amendment that this will come into place without this coming into place. That's not what this says. This says first it'll be your performance, then it will be the rest of it. We're saying no, it should be based on performance only, because the rest of those items are already covered under the act and under the Ontario health and safety act.

Mr Offer: And you haven't spoken about sub (d), which means any other matter that the board considers—

Mr Dool: Sub (d), I think that's a catch-all. Let's face it. That's just a catch-all. The poor guy who's caught in that catch-all, well, there's nothing there he can do.

Mr Offer: If you've been doing a good job but we still want to catch you, we'll use sub (d).

Interjection.

The Vice-Chair: Order.

Mrs Witmer: Thank you very much for an absolutely excellent presentation. I don't think there's anything I would disagree with. I think you've pointed out very well that employers are going to be penalized. We heard this morning from the Novacor group that if there was a flat assessment rate across the board, it was going to cost it \$1 million additional in assessment. They indicated that companies such as themselves obviously were going to have to be looking at places other than Ontario for investment. I think you've pointed that out here as well.

The rates are going to be fixed in a very subjective

manner. The employer will not know what result might be expected. Do you think this is politically based, the changes in the experience rating and the CAD-7?

Mr Dool: I have no wish to comment on that. To me, this is not a political thing. I'm sorry, Ms Witmer. This is right down and dirty. This is going to affect the employees 15 years down the road. They're not going to have nothing.

Mrs Witmer: Would you explain that?

Mr Dool: This program will be broke, okay? We won't have any jobs to work on. That's what's going to happen. We cannot be competitive with this ongoing thing here over our heads, and the employees should become aware of it. The well has run dry. We cannot compete any further with any more added costs. In the construction industry alone, we're looking at added costs already. The rebates have been decreased. The surcharges have been increased in order to come to a neutral position on the CAD-7 program. We accept that because we accept those neutral positions. On the other hand, we're just buried in this kind of thing.

I'm sorry. I don't wish to comment. I don't think this is a political thing. I don't think it should be a political thing.

Mrs Witmer: It's just that the unions are asking for—

The Vice-Chair: I thank the London and District Construction Association for its presentation this afternoon.

UNITED RUBBER WORKERS, LOCAL 677

The Vice-Chair: I'd like to call forward our next presenter, from the United Rubber Workers, Local 677. Good afternoon and welcome to the committee. Once again a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat briefer to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourself for the record and then proceed.

Mr John Cunningham: Good afternoon. My name is John Cunningham. I'm the president of Local 677, URW, Kitchener, also a former WCB rep and also an injured worker. Greetings to the committee and to the Chair.

The current government, in introducing Bill 165 with the promise of a royal commission, has presented timely and responsible legislation to answer some of the problems of the WCB system now. Some of those problems we have been encouraged to think of as huge. At the heart of 2 Bloor Street, previous governments have meddled in the affairs of the board by appointments to the board of directors and by interfering in the daily affairs and the policies of the board. Employees at the board were never shy to explain why morale was terrible.

The public has been led by certain less-than-honest employer lobbyists to believe claims that the board's financial affairs under Bill 165 will see the unfunded liability rise from \$11.6 billion in 1994 to \$13 billion in 2014 by omitting the fact that the \$13 billion represents inflated 2014 dollars and ignoring the funding ratio, projected to rise to 18%. Those who have a stake in the system, the employers and the workers, should be the

ones to run the system with the government.

Bill 162, a bill thought to be revenue-neutral, a term which is an oxymoron, brought deemed in, in a period of high unemployment when the disabled already experienced 40% unemployment. This bill then does not address poverty that no obligation to return to work before Bill 162 brought. Some 40,000 workers on small WCB disability pensions thought unlikely to benefit from rehabilitation remain unemployed.

As a previous worker rep for many years and now president of 975 members in the heavy industry of making tires for the Michelin corporation in a factory which has been open since 1962 and unionized since 1962—you'll pardon me if I stray a little from the text. I've written this without the help of my computer, which broke down, and I'm also on holidays without benefit of wage today. If I stray a little from the text, it took two cities and two copying machines to get this to you. So I do apologize.

I do believe that Bill 165 will address some of the larger problems within the WCB system in a responsible and progressive manner. It is unfortunate that the business side of the Premier's Labour-Management Advisory Committee couldn't hold its final bargained position that held similar direction as this bill. This could have been the royal commission instead of what it is today. We could be down the road. I hope the attached appendix with suggested amendments will help the legislation's creators to correct the language which could, in my opinion, lessen the effect that they wish to create.

As a workers' rep, I've escorted many people to the front door after almost no accommodation on either pre-injury or suitable work could be found, many of these workers with 20 years' service or more, 45 to 55 years of age, with tears in their eyes, because while cooperating with everyone down to the wire, no job could be found by the company. If you had retired naturally, the fanfare of the employer and fellow workers cranked up to wish you all the best on your walk-around day. The disabled, having signed off for disability pensions, had only me to escort them to the front door. All asked, "What happened?" after back-to-work programs and aggressive treatment programs were unsuccessful. All asked: "What happened? What do you mean I can't work? I've worked all my life for this company, and you're telling me they can't find a job for me?"

So my fear in Bill 165 is in subsections 103(1) and (2), amendment 28. It has no teeth.

I've heard many of the speakers here today talk about, "Well, perhaps we could just let everybody be joint." I work for Michelin. I know what joint is all about. Most of the employers behind me would die to be Michelin, with its attitudes towards the worker. Make no mistake, health and safety and the rating programs are working, because it is mandatory. The health and safety programs are mandatory, and that's where the joint has worked.

The tripartite board will hopefully change, make some sense of or dismantle NEER and CAD-7. Under section 103, experience ratings must be modified to reward good, cooperative behaviour against penalties for uncooperative, poor behaviour.

Talking on NEER and CAD-7, I saw in the past dramatic increases in the number of cases questioned by my employers in small ways that are demeaning to the injured worker. An example: A small box on form 7 asks, "Do you have any reason to doubt this claim?" to the employer. Most were marked in without any reason.

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My employer has recently reacted to Bill 165 coming close to law by the presentation to the union of a disability management policy, complete with its own manual, made to look impressive and impressive to hear but with next to no substance. At no time was there any time spent with worker-trained people from the union, operating with some 30-plus years of service within that factory.

There's no amendment for the language in my amendment added here today, simply because I think there would have to be a change of attitude as far as mandatory is concerned. The previous people said the word "shall" is somewhat obligatory. Anyone in labour knows the word "shall" is mandatory. That word is lacking within this legislation.

With ergonomics, the new buzzword, the company will assure the union that it is looking at this or that equipment to be redesigned ergonomically for the good of the worker and for the company. The worker will now be able to do 2,500 tires a shift. In the next breath, they will inform me that the same worker, by a recent time study, will have to produce 3,000 tires a shift in two months' time.

I'm sure they're puzzled when I can't see their ergonomic salvation for my member. Heck, unions with people who have experienced injuries on the job taught companies the worth and the meaning of the word "ergonomics." They, the companies, misheard and bought the program, only later to realize we weren't talking about economics and experience ratings.

The only successful assessment programs will be the gainful employment of injured workers at their pre-accident employer wherever possible or suitable work on another job. Real reward for the employer will only come from prevention and re-employment. Lasting re-employment will come with joint programs only.

I suppose the standards of the program suggested in section 103 would come from the Workplace Health and Safety Agency, and considering some of the fine programs it's developed, this is in the right direction. This section, however, does not mandate the supposed programs, and while large employers may choose to participate with unions in joint programs or committees, some union shops and most non-union shops will not. Those reps will be escorting injured workers permanently to the front door, like I did.

Some would suggest that we can just dump the onsite work of accommodation, rehabilitation and return to work on the joint health and safety committee members or the elite of the certified members because of the bang-up job done there where joint committees were truly left to be joint. Unfortunately, re-employment is the aftermath of an accident, and special skills are needed and must be learned for return-to-work programs to work, which

legislators here have recognized. Those committees are usually far too busy already if allowed to operate correctly.

Finally, in closing, all of us and the medical community must ask about the mindset that the term "early return to work" has and can cause in many soft-tissue injuries. Originally, all those injured stayed home until entirely well, or in a static condition anyway. I agree that instead of muscles wasted away, in many cases proactive treatment can benefit many. But as jobs become more repetitive and costs higher, returning a muscle-specific worker to a job aggressively early may be more destructive to atrophied muscle groups around the injured groups. It is my opinion that this produces a hurry-up atmosphere in treatment more in line with experience ratings and disability management far too aggressively applied than the commonsense plan to heal the worker.

Let's help heal the injured worker. Let's re-employ the injured worker with dignity. Let's all go forward to the royal commission and finish the job that is well started within this Bill 165. Thanks for the opportunity to speak to you today, and I hope I can answer any questions you have for me.

Mr Mahoney: Your presentation basically says that CAD-7 and NEER are not working at all, yet we've heard statistics from business groups, one just before you, that their lost-time accidents are down 62%. We heard that before, in the hearings in Toronto, and yet their costs for WCB coverage of course are up. We've heard you claim that the health and safety agency is working very well in promoting health and safety training within the workplace. I might disagree with that but that is another debate or another issue, perhaps. Do you have any statistics that would prove that these incentive programs are indeed not working?

Mr Cunningham: I would give you the opposite in real and plain dealings every day because I'm president of the local and do not deal full-time with WCB. But in a workplace that works 56 hours in a row on three rotating shifts with workers who do not claim stress as a real, compensable injury because they're just too afraid of the system, I know that NEER and CAD-7 are management programs. They don't deal with the issue of injuries. They're just tracking devices, wonderful for you to reward people if you wish, but they're tracking devices. They don't bring any change themselves. The health and safety programs bring the change, not NEER and CAD-7. That's practical experience.

Mr Mahoney: We had a lady here earlier this morning and she was from a labour perspective; I've forgotten specifically which group. She suggested that management should be rewarded if it's successful in reducing accidents and in reducing the impact against injured workers. So what I'm having a little trouble with is that we're going away from a system. It appears, from what we've heard, that the only section in the entire WCB program that clearly statistically demonstrates improvements in lost-time injury is the one that this bill deletes. I understand politics and I understand philosophy and I understand that perhaps labour is tied closely to the NDP and wants to support them, but even you have identified four

or five areas of the bill that you don't agree with. If the amendments that you're suggesting do not go forward, would you still support the bill or would you think it should be rewritten?

Mr Cunningham: Here I can give you a small analogy about my employer who one time decided to reward the workers—this is the office of the employers—and he would give them a turkey at Christmas. So he gave everyone who hadn't been involved in an accident a turkey, including the fellow who bunted someone down an aisle with a tow motor. I have said in my brief, if you will read it, and I know it's a little rough because I typed it by myself with my injured hands, but I will tell you that I think there has been real progress made in this bill. Are we to stand aside and allow it to become another skeleton in the closet or are we to deal with it now and deal with it by the royal commission fully when the time comes?

The Vice-Chair: Thank you. Ms Cunningham.

Mr Cunningham: A clan member.

Mrs Cunningham: Right. Lots of Johns in our family too. I'm just wondering, I think that your main thrust here is that a lot of the work we have to accomplish is something that you want to see jointly.

Mr Cunningham: I find it only effective—I will give you an example. We survived survival negotiations in 1991, shortly after Michelin took us over. They were granted \$2.5 million by the federal government and \$2.5 million by the provincial government. There were more mandatory strings placed on the provincial money. The company seemed to run through the federal money very quickly, but when having to justify how they spent that money, they didn't spend the provincial, and I would say the same is true. I want it jointly because the "mandatory" and the "jointly" meant we had to put our partisan views, which Mr Mahoney suggests that I have—I'm not a card-carrying member, by the way, Mr Mahoney.

I would suggest to you that when it becomes mandatory, we have to sit and work out our differences bravely across the table. Is it 100% successful? No, it's not, but is it much more successful than a company such as Michelin? They have done good things in safety in our facility and they have worked jointly, but if I was to give them management right without the "joint," I suggest to you that their programs would have little substance to them. They would be good to look at and nice trinkets, but they would have very little relevance to the worker on the floor.

1620

Mrs Cunningham: You've answered my question on "joint," and I think that a lot of the joint programs that are taking place in the workplaces in London, the ones I've witnessed anyway, where I've been invited, don't have this kind of legislation to support what they're doing. They seem to be doing it, because they're using their common sense and some of the legislation that we already have.

You state on page 5, I think, "The only successful assessment program will be the gainful employment of injured workers at their pre-accident employers"—I think

you're talking about working for the person they worked for before the accident—"wherever possible...at another job." We've actually seen tremendous gains in that. The statistics we've been given have shown us that for sure, absolutely certainly, since 1985 we've had the beginning of some gains and tremendous gains in the last four years. With regard to per cent change in compensable injury frequency since 1965 we've been doing a better job, otherwise, in this area. You're saying, I think, that the real measure here is the success of the person getting back to work.

Mr Cunningham: If the person is back at work, I suggest there is less of a burden to the WCB system. There may be adjustment made between his pre-injury job and his present job by accommodation or other system, but I suggest to you the balance of the money paid to him is much less than if he were unemployed and that a broader view was taken of jobs and how to accommodate on jobs in a progressive manner than it is to simply put the person out the door. I'm sure you'll agree with me.

Mr Hope: Mr Cunningham, I have a couple of questions. Mr Mahoney was getting to where the corporations were saying how the NEER program and the CAD-7 program were working well. I also noticed in the last presentation they told us how much their assessment fee is, about \$12 million annually. They calculate, but they never tell us what money they get back. They tell us how much they pay but they never tell us the return.

I was also intrigued by your story about escorting somebody to the door, about which I have to ask a couple of questions, and they're specific. Have you ever experienced any employer abusing the access to a worker's medical file when you deal with this issue? I mean, you make specific reference about escorting individuals to the door and I'm wondering, through that process.

Mr Cunningham: That is more to do with long-term and the fact that they will not accommodate them rather than that they fired somebody. If I've given you that impression, I apologize for that. An accommodation is an extremely rare thing. In a factory of 975 people we have high accident rates, unfortunately. They've been coming down but they're still very high. My reference really was to the fact that when all things are said and done and that person's put out the door without any, "Thank you for your time; thank you for all the years you have worked," it's not really the fact that he was fired but rather that no accommodation could be found.

Mr Hope: With the other issue dealing with finding re-employment within the current workplaces, I'm wondering, in your opinion, dealing with the workplace, if the doctors themselves wouldn't be a part of that gatekeeper process to make sure that it's meeting the evidence. I've also heard presentations where maybe people are returned to work too quickly and it's caused the accident to recur, a lot of recurrences. I'm wondering who should be the gatekeeper in that process.

Mr Cunningham: If we're going to make the medical community the gatekeeper, then we'd better bring them into the process. I don't think we really have yet, nor have we notified them, really. Yes, certainly we've got to

and even that I fear because it's a very personal relationship. Yes, they must be in the process, but to say that they must be the final arbiter of the decision within it, no, it should be joint again or tri, whatever the system may be, but yes, they are the people who know best. Then again, saying that, doctors usually have only one hour of occupational training and perhaps we as a government, as a labour movement, as management, can provide some training to that extent and open our doors so that they can see the workplace. If they can see the conditions that are working in and not ignore themselves the conditions we work under and the repetitiveness of some of our jobs perhaps, then we can make real progress.

The Vice-Chair: Thank you, Mr Hope. That was three minutes. If I may depart somewhat from my impartiality, Brother Cunningham, who comes from my local, I want to thank you for giving us your presentation from Local 677, the United Rubber Workers.

Mr Cunningham: Thank you very much. My own member, Will Ferguson, happens to be sitting at the table. It's nice to see him active and vindicated. Thank you.

GREY-BRUCE INJURED WORKERS UNION

Mr Dan Jordan: Thank you for the opportunity to address this standing committee in reference to Bill 165. My name is Dan Jordan. I'm the recording secretary of the Grey-Bruce Injured Workers Union. Beside me is John Gault, the chairman of the Grey-Bruce Injured Workers Union.

Our group is opening its presentation by strenuously objecting to the Friedland formula. In essence, the \$200 increase in the pensions is merely a salesman's ploy to sell to a few of those injured workers who are in dire straits. The balance of the package will diminish any of the future increases in the injured workers' pensions. This has been addressed by most everyone in the injured workers' community and I don't feel I should waste any more time on it. Suffice it to say it is a magic show of the lowest degree. Again, it shows that those people who are making the rules and policy have no idea what it is to be an injured worker. Maybe it is time to run our own candidates in this provincial election. Some of those comfortable seats out there may become less comfortable.

The generous indexing of the Friedland formula will save for the business community, as our figures indicate, some \$18 billion over the next two decades. The reality: This formula will erode the pensions of the injured workers and place them on social assistance. This intentional downloading of the employers' responsibility to fund the WCB will now belong to the taxpayer. Please, someone explain to all of us the intent of this Friedland formula.

I have presented an appendix A indicating a photostat copy of my benefits in 1978 and in 1994 of the same claim. I wish to point out that on August 25, 1994, one of the speakers indicated their company had paid out in WCB benefits for its employees and showed that from 1985 to 1993, in an eight-year period, there was a 161% increase in the corporation's WCB rates—an interesting statistic. Not much wonder business communities are hostile to the WCB. We, as injured workers, can only hope their wrath is to the WCB and not to us in general,

as my benefits have risen an astounding 3% annually for the past 16 years. We are somewhat curious as to where the 161% increase in WCB rates is actually going. Not to me, anyway.

We would like to see the following amendments and clarifications made concerning Bill 165.

Clause 1.01(a): The word "fair" must be removed and replaced with the word "full." To leave this clause unchanged without clear clarification as to who will decide what is fair compensation for a work injury can lead and has led to unfair decisions. The only fair compensation is full compensation.

Subsection 1(1): The amended segment of this section will change "industrial disease" by replacing it with "occupational disease." This is a housekeeping item, but there is no definition of what an occupational disease is. A clear definition of "occupational disease" is warranted.

Section 8, the amendment here is by adding the following: "No compensation is payable under this part to a worker or his or her dependant if he or she is receiving compensation under the law of another jurisdiction in respect of the accident."

Some clarification at the time of our meeting was required as to the mechanism of who or what body will determine how the injured worker will be assessed and how much, if any, input the injured worker or his representative will have in this matter.

Section 51 of the act is amended by adding the following subsections:

"With the consent of the worker, a physician who receives a request from the worker or the employer shall provide each of them and the board with such medical information as may be prescribed."

This amendment must be omitted in its entirety. It has the potential for abuse. If the injured worker denies consent to release certain information, he or she may be considered as being uncooperative and the benefits will be cut off. This will lead to extreme hardships for the injured worker and family and become another added expense to everyone except the WCB. It will probably be considered to be a job guarantee by some at the WCB.

This clause also borders on the confidentiality rights of the injured worker and his physician. It has the potential to allow employers a free hand to the medical records of the injured employee. We wish to point out the employer presently has the right to see any medical information that is necessary. The board already has the right to provide it. Why is this item even here except to provide some group extra advantages?

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Section 53 of the act is amended by adding the following subsection:

"Promptly after contacting the worker, the board shall contact the employer for the purpose of identifying the employer's need for vocational rehabilitation services."

This clause fell short of the mark. Work site assessments and workplace accommodations to meet the injured worker's medical restriction requirements are established by the injured employee's physician or specialist

and the board. Usually, the employer contacts the board and advises modified work has been made available. The board sanctions the request and the injured employee returns to work, in many cases to the same old job.

You have heard time and time again from those presenting their briefs to you what is required: The injured worker must have some input in this arena, at least the right to be heard before the board cuts off any benefits for being uncooperative. In the laws of this country, WCB must be the only one penalizing people before they have the right to be heard.

Subsection 53(3) of the act is repealed and the following substituted:

"The board shall provide the worker and the employer with vocational rehabilitation services if the board considers it appropriate to do so."

To include assistance to employers in the same sentence and the same wording is misleading and inappropriate. Services to employers are often entirely different from those provided to the employee. They may have the same goal to return injured workers to work, but it is fundamentally different. We support employers receiving help in returning injured employees to suitable employment, but this should be in a different section of the act.

Also, the words "if the board considers it appropriate to do so" must be substituted by the following:

"The board shall provide the injured worker with vocational rehabilitation."

Subsection 53(10): "If the board determines, as a result of an assessment or otherwise, that a worker requires a vocational rehabilitation program, the board in consultation with the worker, the employer and, if possible, the worker's physician shall design and provide one."

The employer should only have the right to input if the injured employee is in fact returning to work for the accident employer after vocational rehabilitation. If the employee is not returning to the accident employer, that employer shall have no involvement with the injured worker's rehabilitation. Also, the words "if possible" must be removed and the injured worker's physician must have a say in the worker's requirements for vocational rehabilitation services. Perhaps at this point the health of the injured worker is no longer an issue.

Subsection 53(12): "A vocational rehabilitation program may include assistance in seeking employment for a period of up to six months after the worker is available for employment."

The word "may" must be replaced with the word "shall." In today's work environment, we are seeing very well qualified people without a handicap being turned down for work. How does one cope with the job market with not only a handicap but a WCB stigma attached to it as well? There must not be a time frame attached to assistance from the board for injured workers returning or seeking employment that meets the physical/mental restrictions and requirements as established by the physicians.

Subsection 53(13): This clause will be omitted as the previous change, as we proposed, will cover this area. However, as an afterthought, there could be a section

here which will provide financial assistance to injured workers who cannot find suitable employment for creating self-employment. This is an area that should be and must be explored in today's work environment.

Section 54 is being amended by the following: "On its own initiative, the board may determine whether the employer has fulfilled the employer's obligations to the worker under this section."

The change we are proposing is the addition of the words "in consultation with the injured worker or representative and the board."

Section 56, "board of directors": It seems strange that the board of directors will be made up of people normally not in the classification of the injured worker. However, these people have been struck by some bolt of lightning that makes them professionals in what occurs when one becomes a statistic of the WCB system. Recognizing that each of the representatives has a role to play in the working of the WCB, without the input of the largest stakeholders of the WCB, the injured worker, Bill 165 or any other occurrences within the WCB will remain incomplete. There must be representation from the injured worker community at the board level.

Subsection 63(2), an amendment to section 51 we alluded to earlier: "Prescribing medical information" is too broad a statement and should be changed to "prescribing medical restrictions." The employer must not have the right to question or ignore the work restrictions as established by the medical profession. It will suffice for the employer to know that there are work restrictions and what they are. If more information is required, most employers have a health services department and inquiries may be made through that department. It is imperative that the injured worker or representative be kept informed of any information the accident employer requests in regard to the injured employee.

Section 65: A quorum shall exist for the purposes of conducting business of the board, providing there will be seven members in attendance—three from the employer side, three from the worker side and one from the public interest side.

Subsection 65(2): Some discussion took place with this one. Due to restructuring, the Minister of Labour will set policy for the board. The new board will respect the policies of the minister. This will run for one year. A memorandum of understanding has been established for this to be made possible.

One area of this does cause some concern: the fact that every five years after this section comes into being the board and the minister shall enter into this memorandum of understanding. Does this mean that after every provincial election in this province the people of Ontario will be dealing with a minister who has the power to completely change the scope of the WCB at the whim of the policies of the government that comes to power? In other words, we could have a new WCB every five years without input of the board of directors. At what expense to the stakeholders of Ontario, the injured workers?

Section 72: Prior to any proceeding, the injured worker must be provided a true copy of his or her file. Also, a

subsection must be added that if mediation is not successful in resolving the matter, either party may refer the matter to the next level of appeal: hearings branch.

I forgot section 69 here: This again refers to vocational rehabilitation under section 53. This amendment of the act is prejudicial in its present form. Every injured employee must have the right to vocational rehabilitation, period.

Liability of the board: "No proceeding lies against any of the following persons for an act or omission by any person while discharging or purporting to discharge responsibilities of a judicial nature that the person has in connection with the execution of a judicial function under this act." Great work, if you can get it. The words "in good faith" must be added to this clause after the words "judicial nature." We are somewhat in awe that no explanation of any accountability has appeared in this Bill 165. What are the methods of accountability?

Subsection 95(6): This subsection must be removed as the Occupational Disease Standards Panel must have an arm's-length relationship with the Workers' Compensation Board. We feel it should not report to the Minister of Labour. As a primary function of the ODSP is related to health, it stands to reason from our perspective that it must report to the Minister of Health. Information required by the WCB can be accessed from the Minister of Health. We believe that, by being tied to the WCB, budget restraints may influence its effectiveness.

In conclusion, the fact that the Rae government has recognized the need to change the present WCB system is appreciated. However, as has been stated time and time again within this arena of public hearings, no one is appreciative of Bill 165. It falls far short of the goal of protecting injured workers. The government is again reminded that the purpose of the WCB was to provide injured workers and their families with full compensable wages and benefits tied to cost-of-living increases.

We are not politicians or lawyers; we are in most cases laypersons. We have a variety of knowledge collectively at our disposal. We are becoming more educated within the systems that we must deal with. WCB problems are also health, Canada pension plan, social assistance, depressions, labour relations and just being there for each other when we are needed. Perhaps in time we will be in the political arena and in the lawyer and physician realms. Until then, we do what we have to for life.

Thank you for this opportunity. We are now open for any questions from the panel.

Mrs Witmer: Thank you for your presentation, Dan. I did appreciate it very much. I think you've given us some very good insight as to what the injured workers do experience. You've indicated that this bill unfortunately just doesn't respond to the concerns you have.

Do you believe that if injured workers were added to the bipartite board there would be a significant difference, or what else is it that you really feel you need? What is the key?

Mr Jordan: I think the key for the WCB system—you've hit it right on the nose—is that without input from the injured workers' point of view, right from the board

of directors on down through, no one knows the need of an injured worker more than an injured worker who has been through the system and has seen—I just feel that no one knows what an injured worker needs. Who else could know more than an injured worker?

1640

Mrs Witmer: So it's absolutely essential that there be the representation.

Mr Jordan: It's absolutely essential. For anything in a bill that's going to improve the Workers' Compensation Board to work, more input from injured workers has to be there.

Mrs Witmer: Were you recommending two?

Mr Jordan: An equal amount of representation is what I'm looking for, whether it be two or three. As long as there's an equal amount of representation, that's fine.

Ms Murdock: Thank you very much. Just to continue on that thought then, in order to maintain it as bipartite, are you suggesting as well, for instance, as your opposite number that an equal number of small business reps should be on for the management side?

Mr Jordan: If small business has one rep or if they have two reps from small business and two from the larger employer community, then there should be two from the injured workers' side or two from the governmental side. I don't expect every small business to have their own representative in there and I don't expect every injured worker to be in there either, but if there are two from the small business community, two from the larger employers in the province, then there should be two from the injured workers.

Ms Murdock: And two from—

Mr Jordan: Two from government.

Ms Murdock: Now, just a minute. Hold it. You're saying that you would want government represented on the board of directors of the Workers' Compensation Board? Is that what I'm hearing you say?

Mr Jordan: No, I guess not. I'm not a politician. I guess what I'm trying to say is that I just think we deserve equal representation, is all.

Mr Mahoney: By the way, if you have an opportunity to read the report that I and my caucus put out entitled *Back to the Future*, you'll find that mirrors exactly what you're saying. In the hearings that I heard around the province it was very clear to me that injured workers must have a much stronger role right at the board level. But I went a little bit further and suggested including health care professionals specifically trained and oriented towards injured workers and the workplace and all of the health and safety issues, small business, the traditional labour-management makeup, but the expansion of the board to recognize that there are more than two stakeholders in workers' compensation in the whole system, more than just management and labour. Predominantly the injured workers, whom we heard from all over the province, are one I think could bring a wealth of experience and understanding to the system.

I concur with that. I guess it's not really a question; just to tell you that it's in the Liberal document, it's in

the report that this be done. I congratulate you for this presentation.

Mr Jordan: I agree. That also fits into section 51, "With the consent of the worker, a physician who receives a request from the worker or the employer...." We know the employers like it. Why wouldn't they? We know the authors of this bill like it. You've heard how the injured workers feel about it. I'd like to hear about how the physicians would feel about handing over medical information without their patients knowing. I don't think you'd find too many who would like it.

Mr Mahoney: No, I agree with you.

The Vice-Chair: Thank you. On behalf of this committee, I'd like to thank the Grey-Bruce Injured Workers' Union for its presentation this afternoon.

Mr Winninger: On a point of order, Mr Chair: Earlier this afternoon when Graham Smith was presenting, he recommended that in establishing merit and rating programs for employers WCB should carefully consider the reduction in the size of the workforce. In my questioning I agreed with him.

I understand that later in the afternoon, when I was out of the room, Mr Tom Dool of the London and District Construction Association suggested that during my questioning I was taking a cheap shot at the efforts perhaps of the construction industry to reduce the frequency of workplace accidents.

Mr Dool advises me that frequency of workplace accidents is always measured in terms of accidents per 100 employees. If this is the case, then there wouldn't be any need for Mr Smith's recommendation. I'd like to indicate for the record that the question wasn't meant as a cheap shot; it was based on Mr Smith's representations to the committee. I certainly commend the construction industry for any reduction in workplace accidents that has occurred, but if we're measuring frequency in absolute numbers, that is, the number of workplace accidents year to year, regardless of the size of the workforce, certainly Mr Smith's recommendations were relevant.

The Vice-Chair: Thank you for that point of information.

Mr Mahoney: Was that an apology?

The Vice-Chair: This committee stands recessed till 7 pm this evening.

The committee recessed from 1646 to 1904.

UNITED STEELWORKERS OF AMERICA. LOCAL 8782

The Vice-Chair: I'd like to call our first presenters for the evening, the United Steelworkers of America, Local 8782. Good evening, and welcome.

Mr Ray Kitchen: Thank you. My name is Ray Kitchen from the United Steelworkers of America, Local 8782. I am a workers' compensation representative with that local. First of all, I would like to thank the committee for allowing me to present my brief on behalf of the United Steelworkers of Local 8782.

We'll start out with the United Steelworkers' position, Local 8782. We support Bill 165, with the amendments as suggested by the Ontario Federation of Labour. We believe that reflects the agreement that was reached by

the Premier's Labour-Management Advisory Committee in March of this year. Although this bill does not address all of our concerns and we do call for some amendments, it's certainly a step in the right direction. It deals with the most important outstanding issue, that being the poverty of injured workers.

The other issues of concern to us will be addressed by the much-needed royal commission that will hopefully reshape our workers' compensation system to reflect the needs of today's society and of the future. The fact that over 700,000 workers in this province are denied compensation coverage and 20,000 employers are not required to pay into the system is a major issue to our union.

Another issue that must be addressed by the royal commission is the issue of occupational disease. The Weiler report estimates that as many as 6,000 workers die every year in our province of occupational disease, and only a fraction are compensated.

The royal commission must also look at a universal disability insurance system, or UDI. This could clear up the frustration that the workers face while waiting for the long appeal process to decide whether or not their disability is work-related. A case in point: There was a woman who made a presentation to this committee in Toronto last Thursday who indicated she was injured in 1987 and she did not file a claim until 1990, in fear of losing her job. To date, she is still not in receipt of any workers' compensation benefits, after spending \$10,000 on legal fees. This is disgraceful in two ways; first, that a worker has to suffer this long, living in poverty, frustrated while waiting for a system to establish whether or not she is entitled to benefits. Second, it is disgraceful that workers must pay outlandish fees to lawyers and private consultants for representation.

Ms Witmer, you brought out through your questioning that the worker belonged to the United Steelworkers of America. I was personally quite distressed. According to our union's constitution, we must represent our workers in not just workers' compensation issues but all issues. So this prompted me to call our District 6 office. I found out that the worker was being represented by the United Steelworkers of America and she, on her own, chose to seek legal assistance. District 6 has since been in touch with this woman, offering her their services, as recently as three weeks ago. They sent a letter to confirm this, a letter dated August 12 of this year.

This leads me to the truth of the matter: Sometimes injured workers are not happy with the answer a representative must give them because they are bound by the act. The representatives are bound by the act and the policy of the Workers' Compensation Board. From my personal experience, injured workers get frustrated with the long delays during decision-making and often blame their representatives for the long process the Workers' Compensation Board takes. Our union is structured with an accountability process so that if members are dissatisfied with the representation they are receiving, they can file a complaint to a staff representative. These staff representatives are easily accessible to all members of the union, all members of the Steelworkers.

They also have the District 6 office, which is the district office for the United Steelworkers they can come in contact with and which is the author of the letter that was written to this injured worker in question. The District 6 office will ensure the members' fair representation.

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The next issue I want to talk about is the issue of unfunded liability. As a responsible stakeholder, we are concerned about the unfunded liability. Today, the workers' compensation condition is somewhat healthier than it was 10 years ago. It now has assets which will cover about 37% of its liabilities. This funding ratio has improved from 32% in 1984 and will continue on the trend if Bill 165 is implemented. It is projected that the funding ratio will rise to 55% by the year 2014, even though the unfunded liability is projected to rise to \$13 billion in inflated 2014 dollars. We recognize that the only way to reduce this debt is through accident prevention and re-employment, and I'll repeat myself: accident prevention and re-employment.

Employers continue to refer to the system as being technically bankrupt. But if they are generally concerned about the unfunded liability and the welfare of injured workers, as they have claimed during some of the presentations of these hearings, why doesn't the government eliminate rebates all together? This would result in a saving of \$528 million per year. Surcharges should be maintained for poor record performance, which results in additional savings, as well as being an incentive for good health and safety practices.

It is ridiculous that some employers can presently access 90% of their assessment as a rebate. In the Yukon, only 30% of assessments is obtained through a rebate, and 15% of that rebate is decided specifically by the occupational health and safety branch, based on the employer's health and safety practices.

No wonder employers are claiming the system is perfect. They are able to achieve rebates by hiding claims, challenging entitlement, appealing claims and coercing workers into not filing claims. Good employers with honest return-to-work programs and effective health and safety practices have nothing to fear and everything to gain by the amendments to the experience rating system.

Going back a few years ago, when the last bill came into play, which was Bill 162, I sat in front of a committee quite similar to this and gave a brief on Bill 162. We were fundamentally in disagreement with that bill. While Bill 162 set an obligation on employers to re-employ the workers they have injured, it has not worked. It has resulted in workers being deemed to be able to do phantom jobs and reduced their future economic loss awards, resulting in many workers living below the poverty line.

Bill 165, however, will make the re-employment provisions stronger by allowing the board to investigate the employer's re-employment behaviour without waiting for a worker to file a complaint. This, tied in with the new experience rating system, will allow for a co-operative approach to ensure that injured workers get back to work with dignity and job security. This in turn will have a

significant impact on the financial situation of the Workers' Compensation Board.

An example of re-employment is that our local has negotiated with our employer a joint re-employment committee. This process has been proven successful time and time again by providing meaningful employment to our members, whether they were injured on the job or off the job. At the same time, it provides a significant cost-saving factor to our employer.

We have some great concerns with the current wording of section 53, which enables an employer to interfere in a worker's vocational rehabilitation program even though it has been deemed uncooperative. We do not believe that the employer who is unwilling to accommodate an injured worker should be allowed to participate in the vocational rehabilitation process in any way.

We are also concerned with the present wording of subsection 51(2) of the Workers' Compensation Act, which obligates the physician to provide medical information about a worker's physical abilities. We feel this information must be non-diagnostic in nature, but list the worker's physical restrictions. We believe the doctor must be satisfied that the information will be used to help the worker's recovery and to ensure their restrictions are accommodated. We do not believe that an employer who has not participated in a cooperative return-to-work program should have any access to the worker's medical information.

Suggested language changes for the two previous sections are contained in the appendix. The appendix is attached to the end of the brief, after page 11.

The United Steelworkers, Local 8782, is in full support of the proposed bipartite structure of the board of directors of the Workers' Compensation Board. This will give the two stakeholder groups equal say in the administration and policy direction of the board. Some employers, during these hearings, have stated that they believe the insurance industry and financial community should have representation on the board of directors. We believe that when their industries are included in the workers' compensation system, then they would become stakeholders. Until then, it serves no purpose to include these businesses and industries.

The chair and the CEO being hired, therefore responsible to the board of directors, will ensure a more responsible system and, more importantly, avoid political interference by the government of the day. While some employers cry loudly that bipartism doesn't work—as you have agreed during these hearings, Mr Mahoney—the history of the Workplace Health and Safety Agency created by the Liberal government under Bill 208 has proven very, very successful. I believe it is a question of power and the fact that the employer doesn't like to share the power. It brings to mind a quote from Clarence Darrow: "The employer puts his money into a business and a worker his life. One has as much right as the other to regulate that business."

The fact is, the agency has come to consensus over 300 decisions and only had to force one to a vote on one occasion, where some of the business representatives voted with worker representatives, and that was on

certification training. Our local is in full support of the \$200-a-month increase to the pension of unemployed injured workers who were injured prior to Bill 162.

Those workers who were over the age of 65 when Bill 162 was passed are excluded from receiving this increase. In the name of justice, we believe that this small group of injured workers, who are now over the age of 70, many living in poverty, must be included to receive this \$200-a-month increase, and we encourage the government to make these amendments.

It is important that the government recognize the need for this group of older injured workers, along with survivors, dependants, those receiving 100% disability pension and 100% future economic loss, or FEL, awards, be indexed at 100% inflation.

Although we not endorse the Friedland formula, we respect that this was part of the original agreement that was reached by the PLMAC. However, the true Friedland formula designed for pension plans—of course, pension plans begin a lot later in life—has no cap. We encourage the government to remove that 4% cap. We hope the whole issue of indexing will be addressed by the royal commission. Again, we believe there are only two methods to control costs: prevention and re-employment.

Attached is an appendix which contains suggested language changes to the bill. Our local encourages the government to consider these changes, which we believe truly reflect the PLMAC agreement, and pass Bill 165 into law.

I'd like to thank the committee for giving me the opportunity to present the views of our local union. Thank you very much.

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The Vice-Chair: Thank you. We have just over a minute each for questions.

Mr Hope: I notice in your brief—in some collective agreements, you have negotiated joint committees. So my question would be, have you had any experience where the employer has interfered with the vocational rehabilitation of an individual coming back to work? Have they ever abused a medical file?

Mr Kitchen: We have had experience but the experience is minimal, because we negotiate a joint committee for bringing injured workers back to work. The joint committee is working, where we have equal representation from the union and the company and we negotiate jobs that disabled workers can do with the disablement, with the restrictions and jobs. The workers are successfully returned through that committee to meaningful and gainful employment, in most cases. In some cases there are injuries that we could not accommodate, but then again we made a major attempt to accommodate those injured workers.

Mr Hope: My question would be, why did you negotiate the joint committees? Were there problems that arose prior to—

Mr Kitchen: Most definitely there was a problem prior to negotiating the joint committee. The joint committee is definitely working and there was a major problem prior to that. That's why we had to negotiate

joint committees.

Mr Mahoney: Further to that—the issue of the joint committees—obviously you seem to have struck upon a successful arrangement with your employer, as I assume you're the negotiator for the local or involved in those negotiations. So you've set up joint committees on re-employment; you have an employer who's cooperative, from what you're saying here. In fact, you even say that it doesn't matter whether the injury occurred on the job or elsewhere. It could have occurred at home or it could have occurred on a sports field or in an automobile or anything.

Your employer is obviously being quite magnanimous in agreeing that, regardless of the fact that the injury didn't occur in the workplace, they're prepared to re-employ and adjust and that type of thing. That's part of the collective bargaining process that you were successful in negotiating with your employer. Is that not substantially different than an insurance policy where you pay a premium for specific accidents that occur on specific sites, ie, the job site, which is what WCB is supposed to be?

Mr Kitchen: A negotiating process is something you negotiate with your employer. I don't really understand the question, to be honest with you. Obviously we didn't negotiate an insurance policy with our employer.

Mr Mahoney: No, no, WCB is the insurance policy. The employer pays a premium; an accident occurs on the job site; it does not cover off-job-site accidents.

Mr Kitchen: Oh, no.

Mr Mahoney: You've gone further and negotiated in your collective bargaining process to really what amounts to universal accident coverage. I commend you for your success in that and I commend your employer for negotiating that with you. My question is, is there not a fundamentally substantial difference between an agreement collectively bargained between you and your employer to provide universal accident protection for all employees and members of your union, and a workers' compensation system which is simply insurance for an accident on the job site for which a premium is paid?

Mr Kitchen: I wouldn't say it's universal protection for the injured workers. The point I was trying to make is that we have a re-employment program. It saves the employer workers' compensation costing. It brings their injured workers back to work with dignity. It's something that we had to negotiate. Obviously, when you negotiate something, you give and you take a bit, right?

Mr Mahoney: Right.

Mr Kitchen: So we had to give something up to bring our injured workers back to work. But our injured workers in our workplace mean a lot to us.

Mrs Witmer: Thank you very much for your presentation. I'm pleased you did take the time to follow up on the woman last week who had indicated she wasn't satisfied with the employer and the union's help. Thank you for the presentation.

The Vice-Chair: On behalf of this committee, I'd like to thank the United Steelworkers of America, Local 8782, for their presentation this evening.

LONDON REGIONAL PSYCHOLOGICAL ASSOCIATION

Dr Tony Iezzi: My name is Tony Iezzi and I am the president of the London Regional Psychological Association. I would like to thank the committee for allowing me to speak tonight on behalf of the London Regional Psychological Association, which represents a group of about 100 clinical practitioners, academicians and students in the London and surrounding area.

The mission statement of our association is to facilitate the growth and development of psychology, to offer continuing education experiences to psychologists and to advocate on behalf of psychology to the public, media and the government.

Psychologists have long played an integral part of the health care system to injured workers. We make significant contributions in providing neuropsychological, psychovocational and psychological assessments of injured workers. These assessments provide statements of current and future occupational and rehabilitative status. Perhaps of greater value to the injured worker, psychologists have expertise in the management of psychosocial elaborations of injuries.

Regardless of the type of injury, there's a subgroup of injured workers that will experience a number of psychosocial elaborations which consist of marked functional and lifestyle impairment, marital and familial discord and high levels of emotional distress usually in the form of depression and anxiety. Psychologists have been particularly instrumental in the management of psychosocial elaborations of injuries in workers suffering from head injury, post-traumatic stress disorder and chronic pain. The conceptual framework for our comments on Bill 165 is based on our extensive experience in the assessment and management of injured workers.

Although we have had an extensive and long-standing involvement in the assessment and management of injured workers, neither the current act nor Bill 165 acknowledges the important role of psychologists. This is disturbing, given the significant changes included in the Regulated Health Professions Act, also known as RHPA. Three fundamental changes in health care service delivery were introduced in the RHPA: (1) to increase public accountability in health care service providers; (2) to recognize the unique expertise and competencies of a number of health professionals; and (3) to increase consumers' freedom to choose from among a number of regulated health professions.

RHPA was designed to create a more equal status among health professions and to reduce the medical monopoly of health care services. Given the spirit of RHPA and the health care needs of injured workers, we feel that the continuous and exclusive reference to physicians and to terms that reflect their activities and interests in Bill 165 and the Workers' Compensation Act is inappropriate.

There are multiple examples of exclusive references to physicians in several of the provisions throughout Bill 165 and the current act. Subsection 9(5) of Bill 165 stipulates that the worker's physician shall design and provide a vocational rehabilitation plan in consultation with the worker and the employer. This provision does

not take into account that injured workers may have non-physicians participating in their care or acting as their primary care giver. Moreover, this provision does not acknowledge the particular expertise of psychologists and other rehabilitation specialists in designing and providing vocational rehabilitation plans.

Subsections 8(2) and (3) of Bill 165 state that medical information provided by physicians may be accessed with the consent of the worker by the board and that the board will determine the cost of these reports. Other health care providers, especially psychologists, are often asked to provide information pertaining to a respective injured worker. It is our contention that a consent should apply to all regulated health professionals and that regulated health professionals who provide such reports be similarly compensated.

Consistent with the Ontario Psychological Association's position on Bill 165, the London Regional Psychological Association would like to recommend that subsections 8(2) and 9(5) be amended by replacing the term "physician" with the term "appropriate health care practitioner." In line with this position, we recommend in section 14 that the terms "medical information" and "medical restrictions" be replaced by the terms "health information" and "health restrictions."

In the current act, subsection 50(2) defines "health care" as meaning "medical, surgical, optometrical and dental aid" etc. This provision should be amended to include services by psychologists. Thus, health care should read as "meaning medical, surgical, psychological" etc. Bill 165 and the Workers' Compensation Act also fail to include other amendments that appreciate the role and contribution of psychology and other health professions.

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For example, subsection 1(4) of the current act defines "impairment" as "any physical or functional abnormality or loss including disfigurement which results from an injury and any psychological damage arising from the abnormality or loss." We feel that psychologists are trained and qualified to evaluate psychological damage from any abnormality or loss. Unfortunately, several articles under section 42 of the current act stipulate that only medical practitioners conduct assessments of impairment, regardless of whether the consequences are physical, psychological or both.

Admittedly the term "medical practitioner" is not defined. However, the intent of the legislation has been to restrict assessment of impairment to physicians. Limiting the assessment of impairment to physicians is incompatible with the current Ontario motorist protection plan. Under this law, psychologists can assess impairment to an individual who has incurred an injury in a motor vehicle accident. Therefore, we recommend that Bill 165 further amend the current act under section 42 to include the assessment of impairment as falling within the scope and practice of psychology. In addition, all articles under section 42 related to medical practitioners should be changed to health practitioner.

There are other provisions in Bill 165 that concern us. The following sections provide examples of amendments

that although they appear very positive in presentation, these amendments also raise more questions. We certainly approve of amendments in section 9 aimed at enhancing vocational rehabilitation services and early return to work. We have already made the point that psychologists should be an integral part of vocational rehabilitation plans. However, what is also of concern to us is how the board will be able to implement and enforce reasonable time limits and vocational rehabilitation plans. Subsection 12(1) and subsection 12(2) state that "the board of directors shall act in a financially responsible and accountable manner," and "act in good faith with a view to the best interests of the board." We feel that these amendments are important, but we are left with how will the board ensure that these provisions will be met.

Subsection 15(3.1) states that the board shall follow developments and understand the relation between work, injury, occupational disease and workers' compensation. We applaud this development within Bill 165. Unfortunately, it is not clear how this amendment will be reflected in actual practice. Will the board set up a committee or a panel to review recent clinical research development? Who will be on the committee or panel: medical practitioners; other health professionals; consumer groups etc? If a committee is not established then who on the board will be responsible for monitoring clinical and research development?

Finally, section 20, which covers the mediation process, we feel represents a major advancement from the Workers' Compensation Act. Given our experiences with the mediation process under the Ontario motorist protection plan, we have some concerns. Who will be the mediator? Will there be potential conflict of interest for the mediator? In other words, will the mediator be serving the board or the injured worker? What are the powers of the mediator? Is there potential for misuse of the mediation process by the board or the injured worker? Thank you.

Mr Mahoney: One of the differences, by the way, between the OMPP, I guess—or an obvious problem is that the premiums are paid by the individual so you're not relying on somebody who pays a premium and somebody else who gets the benefit. I get in an accident, my insurance plan protects me. I paid the premiums. If my premiums go up, I pay them, so I'm sort of singularly responsible and there's a pretty clear difference in making the comparison between the OMPP and the workers' compensation system. The OMPP is clearly laid out with specific awards and is not income replacement in the same sense. There is a provision for that but I think they're kind of apples and oranges and—

Dr Iezzi: One reason I did bring up the OMPP is to basically indicate that OMPP at least recognizes the role of psychology and their expertise, and we see our role in assessment and the management of injured workers as possibly saving costs.

Mr Mahoney: I appreciate that. I've met with Dr Berman, actually, and we've talked at some length about this. She was upset with me at first because my report didn't include psychologists, but it didn't include a lot of other people. I think it's important that all health care

professionals do get involved in finding a way to fix this, including the psychologists.

The great fear—and I'd like your answer on this—that the people who pay the costs of WCB directly have is that involving psychologists then is the first step towards broad-based stress being a compensable injury. Probably a lot of it is lack of understanding of the technologies. You know how to fix a broken arm and things like that, but the psychological aspects are very frightening to employers and to a number of other groups around the province.

If the psychologists are going to play a major role in this, presumably stress would then become a part of that role. How do we ensure we can define where the stress occurred, that it's not home related, it's not outside of job related entirely? Some stress claims are already covered if they relate specifically to an accident; there have been awards on that. It's such a grey area that many of us who would consider ourselves laypeople in comparison to you and your colleagues—it's a very unclear, frightening scenario.

Dr Iezzi: I treat about 30 to 35 pain patients a week, whether they be motor vehicle accidents or injury related, and clearly that's always an issue; in other words, to treat the individual and to treat the psychosocial consequences of that injury and not some other problem, particularly problems that were present even before the injury. Our job is always essentially first and foremost to return that individual to work. Essentially, anything that prevents an individual from returning to work is something that we address and try to remedy.

It's a hard question to answer. I know I could myself—it essentially comes down to responsibility. Are there other individuals who might abuse the system, either psychologists or other health professionals? There is that possibility. That's why I keep going back to appropriate health care practitioner. It should be someone who's recognized as having an expertise in that particular area. I wouldn't want to recommend that any psychologist who belongs to the Ontario Psychological Association could be considered as someone you could send an injured worker to.

Mr Mahoney: Oh, so it would have to be a specialist who has worked specifically—

Dr Iezzi: Someone who would be recognized, yes.

Mr Mahoney: —in that area, because there are many medical practitioners who are very leery to accept the responsibility of return to work and who simply say: "Our job is"—I don't mean to belittle it, but—"we diagnose it. Take two aspirins; call me in the morning. Beyond that, we don't want to get involved." I understand that and there's reluctance on the part of the family doctor to get involved in a dispute between his patient, the injured worker and some huge organization like WCB. It's interesting, I hadn't heard the specialty side of the psychologist argument before.

Mrs Witmer: Thank you very much for your presentation. I think you're probably about the third presenter who has asked us to give consideration to including health care providers as part of the team that provides

assistance to the injured workers. There was some concern about the fact that at the present time the medical doctor seems to be the gatekeeper and has access only.

You've indicated here that there are some questions, however. The bill is making some suggestions as to what's going to happen, but you've raised some questions on the last page. The question you've raised at the top of the page is, how is the board going to be able to implement and enforce reasonable time limits in vocational rehabilitation plans? What's your concern and how do you think it can be dealt with in order that it would be timely?

Dr Iezzi: I think, for example, as a psychologist, an individual would have to be ready to participate in a vocational plan, and a vocational plan that's administered in an untimely fashion ensures failure. You have to take that into consideration.

The other thing too that I would be really worried about is this sort of—a vocational plan is being proposed and it might be six months or eight months before it finally goes into effect and then when it finally goes into effect you know that individual's physical or emotional status may have changed. So it should be something that would be fairly quick in implementing. For some reason, I have the worry that the WCB is not known for exactly being quick and efficient.

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Mrs Witmer: I guess that's it, probably. We're all aware of the track record and I guess our concern is that it might not happen in a timely fashion.

Dr Iezzi: And who's going to make sure that this will happen?

Mrs Witmer: Exactly, that's right.

The other thing is that you talk about the need for the board of directors to act in a financially responsible and accountable manner. You asked the question, how will the board ensure that these provisions will be met? The minister seems to think that's going to be taken care of, but I hear you say there's still a lot of concern.

Dr Iezzi: Yes, I find it hard to believe. That's not to say I think there won't be any efforts towards this, but there's nothing in Bill 165, other than taking their word on it, that ensures that this is in fact what will happen.

Mrs Witmer: How do you think that could be provided for?

Dr Iezzi: I have some sense that perhaps an external committee or an external body that is—

Mrs Witmer: Outside the board of directors?

Dr Iezzi: —outside, that is impartial, that consists of a number of groups, could be involved in assessing performance and essentially whether they're meeting these standards.

Mr Kloppe: Thank you for your comments. I think you bring out, from your field, some very good points.

Subsections 12(1) and 12(2): I think it's been quite clear since I've been around here for four years and been on a number of committees about workmen's comp and having people who have been in the system on both sides—employers, employees—that it hasn't been work-

ing very well. I guess you understand that this is in the act now; they're going to have to do it.

Wouldn't that be as the board of directors? But when I've heard the stories—we had committees here. Obviously the board of directors, I guess, were just going to meetings and having a good time, because I heard things at a committee hearing, that they have computers that they got but they didn't bother training anybody. In my business as a farmer I know that you can sometimes make decisions which in hindsight you shouldn't have done, but it doesn't take a board of directors—they should have known about that a long time before it got to a committee of government.

I guess this is how we're assuming that this will happen. It's also a bipartite board of directors, of employers and employees. I certainly hope the employers and the employees put people on there who really do go to work and ask the tough questions to their bureaucracy. In fact, it's in the act, as you pointed out: They have to do that. It's not up to you and me to decide; we just assume that they're going to do this, that they are going to ask the question, "Are our budgets on time?" When we build a building, we're going to assume that they'd look at it really tough, or even buying computers. I think that's how it's going to happen, and it's right in the act, as you pointed out.

Dr Iezzi: It's in the act, but I would have liked to have seen some statements that were stronger and directed in terms of—I don't want to use the word "policing," but, you know, how this would be monitored.

Mr Kloppe: We're open to suggestions. Do you have some better wording, short of, "I'm going to take you"—

Dr Iezzi: No, I wouldn't—

Mr Kloppe: How do you make it stronger? You have to have a certain trust, but hopefully, when you have two groups of people—

Dr Iezzi: I was just asked earlier. You could essentially assign a committee or another body whose job is to basically—

Mr Kloppe: —police the police.

Dr Iezzi: No, but that's invested in turning out a good product, a product that works and is efficient and meets the needs of injured workers and society eventually.

The Vice-Chair: On behalf of this committee, I'd like to thank the London Regional Psychological Association for its presentation this evening.

The Chair would like to recognize a former member of the Ontario Legislature for Windsor-Sandwich and former Minister of Labour, Bill Wrye. Welcome to our proceedings.

MICHEL LACERTE

Dr Michel Lacerte: It is my pleasure to make a presentation to this committee, given my perspective as a rehabilitationist and rehabilitation advocate. My name is Michel Lacerte and I'm accompanied by my research assistant, Doug Folseter.

I am a physician specialist in the field of physical medicine and rehabilitation. I'm also a certified rehabilitation counsellor and hold a master's degree in rehabilita-

tion medicine. My present position is assistant professor, University of Western Ontario department of physical medicine and rehabilitation; associate director, UWO Faculty of Medicine continuing education on disability issues; and assistant director of the regional spinal cord injury rehabilitation program.

A good part of my time is spent in the clinic, struggling with injured workers for ways to improve their condition and hopefully returning them back to safe and meaningful work. It is from this latter experience that I owe it to my patients to comment on the sections of Bill 165 addressing rehabilitation services and programs to facilitate their return to work with dignity.

I intend to comment on the sections that deal with medical and vocational rehabilitation.

As a starting point, I would like to share with you my definition of rehabilitation: Rehabilitation is the optimization of ability and autonomy.

The purpose clause: Clause (c) states that one of the purposes of the act is "to provide for rehabilitation services and programs to facilitate the workers' return to work." When I chose Ontario as a residence, I had to familiarize myself with the terminology adopted by the act and the WCB. I must admit that definitions such as that for "disability" at first confused and disturbed me. The act defined "disability" in legalistic terms which did not correspond with the World Health Organization definition endorsed by the Ontario Medical Association and taught in most medical schools. With a clear definition of the term "disability" in section 1, and with time, I have adjusted.

More recently, I encountered truly bizarre new language and terminology which had absolutely no meaning in either the medical or vocational rehabilitation fields. The only persons who pretended to possess the key to the puzzle were a few bureaucrats with absolutely no knowledge or experience in rehabilitation or return-to-work. I am referring to the expensive and defunct rapid re-employment program initiative of the office of the employer adviser and the board's cooperative return to work program.

I hope this anecdote will make you understand my fears when expressions such as "rehabilitation services," "programs" or "return to work" are being introduced in a purpose clause without having been first clearly defined. In this case, "vocational rehabilitation" could be interpreted to mean employability, "return to work" to mean employment and so on. While it would respond to some of the needs recognized in the Premier's Council report on People and Skills in the New Global Economy, such lack of clear definitions has the potential to change drastically the role of the board, not to mention the cost to the system.

My first recommendation is therefore that definitions for "rehabilitation," "return to work" and so on be included in section 1 of the act. I do not think, based on my recent experiences, that we can afford the board, WCAT and other agencies the liberty to give new meanings to the purpose clause which were not intended by the legislators.

Sections 51 and 63, which address reports re return to work, state, "With the consent of the worker, a physician who receives a request from the worker or the employer shall provide each of them and the board with such medical information as may be prescribed."

In the current system, physicians are required by the rules of the College of Physicians and Surgeons of Ontario to have the consent of the worker in order to communicate with the employer. I am a strong supporter of obtaining workers' consent in all cases when divulging diagnostic information to a third party. My experience has taught me that in most situations consent is readily obtained from the worker but significant delays are frequent. These delays associated with securing the consent and completing the forms are the result of multiple factors including insufficient information, inability to contact the patient or patients holding on to the form until their next scheduled visit rather than dropping it at the office.

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Time is the enemy to successful rehab and work is often the best rehabilitation intervention. For these reasons, I believe it is in the interests of facilitating timely return to work that information regarding medical restrictions and fitness to work should be demedicalized and be referred to as work status information. Perhaps under clause 63(2)(h.1) a form could be developed by workers, employers and physicians on what constitutes work status information. Ability to provide work status information in a timely fashion is beneficial to all parties. Again, time is the enemy.

I now will address sections 53, 65(3.1) and (3.2), 69(2) and 103. It's kind of a combination of all of those which deal with employer participation in vocational rehabilitation programs. The numerous amendments to section 53 and related amendments require the employer to participate in the vocational rehabilitation process and give to the WCB the power to determine and impose vocational rehabilitation services. Whereas I am in support, in principle, of the various amendments to section 53, especially involving employers in the process, I do have serious reservations in regard to the board's present ability to provide these services with respect to the proposed amendments to section 65.

The rehabilitation counselling dilemma: Canada is lagging far behind other countries in regard to training of qualified rehabilitation counsellors. There are no Canadian rehabilitation counselling training programs, whereas in the United States, for example, there are approximately 88 programs leading to a master's degree or a PhD in rehabilitation counselling. Until three years ago there was no Canadian certification process for rehabilitation counsellors, and to this day this highly demanding profession remains totally unregulated. This means that the board must rely on individuals without the necessary and essential credentials. This has been a long-standing problem which must be immediately addressed. Ontarians deserve quality vocational rehabilitation services from all government agencies and private service providers. In view of this situation, I cannot see how the board will be capable of providing quality and timely services respect-

ing the proposed provision contained in section 65.

The bill adds subsection 103(4.1) to allow the board to penalize employers for failing to cooperate with vocational rehabilitation services or rehabilitation programs provided by the board under section 53. I do believe, for the same reasons just mentioned, that if the board were to start penalizing the employer or worker for not participating in poorly designed programs, it would lead to a greater board allocation to fight penalties instead of facilitating timely return to work. What is needed are more qualified vocational counsellors who are encouraged to go with the worker to the work site to find realistic solutions.

Challenges linked to collective agreements: The bill makes no mention of how restrictive collective agreement clauses should be dealt with. Let's recall recommendation 52 of the June 1990 Ontario Advisory Council for Disabled Persons report entitled *Workable: Fulfilling the Potential of People with Disabilities*, which states, "That employers and representatives of organized labour ensure that clauses in collective agreements that discriminate against persons with disabilities be amended or eliminated." This is a recommendation I fully endorse.

In this regard, the Ontario labour organizations have made significant strides in improving treatment reserved for injured workers. However, there's still much work to do by labour organizations to change the attitudes of their members towards fellow workers.

"No matter how well-trained, sensitive, well-meaning or objective they may be, supervisory and managerial personnel, line workers are not immune to holding biases, beliefs, or prejudices about persons who are disabled. These feelings and thoughts, deeply and often subconsciously rooted, are carried into daily interactions with disabled employees and can have a profound effect on their social and vocational integration into the business community."

Transitional—the word "transitional" is very important—modified work programs should not be seen as preferential treatment or a threat to seniority; they should be embraced as a necessary step to recovery. A supportive work environment must be created by labour and management in collective agreements.

Section 65, new developments in health sciences: This section will require the WCB to ensure that developments in health sciences and related disciplines are reflected in benefits, services, programs and policies in a way that is consistent with the purposes of this act.

I am concerned that no reference has been made with respect to the Institute for Work and Health and the Occupational Disease Standards Panel in providing, in a timely fashion, the necessary information to the WCB to review the present medical strategy and future developments in health sciences. WCB must be able to provide direction to these agencies in order to formulate policies with respect to new developments in health sciences.

It is not the role of WCB to experiment with unproven developments in health sciences or related disciplines on the backs of injured workers and at the cost to employers. Only evidence-based treatment programs with proven

efficiency and effectiveness should be approved.

Strict guidelines and monitoring systems will ensure that injured workers receive the best possible treatment. Similar guidelines should exist for vocational rehabilitation interventions. Providers of medical and vocational rehabilitation interventions should be closely monitored to ensure high-quality and appropriate service delivery. Compliance with the rehabilitation program by all parties must also be regularly monitored to ensure successful outcome.

Mediation Process: Amendments to section 72 will set out a mediation process to expedite return to work or vocational rehab. I have two recommendations to make to improve the system. The first one deals with rehabilitation counsellors as mediators. I would like to commend the legislators for introducing mediation services. Actually, mediation is probably one of the best forms of early intervention. I believe that in many cases it will facilitate rehabilitation and return to work. I am certain that qualified rehabilitation counsellors or modified-work specialists could also adequately perform this mediation role in the future. Unfortunately, as mentioned earlier, we desperately need more such qualified individuals at the WCB; as a matter of fact, in the whole system.

Roster of medical referees: In many instances, medical information is lacking in order to make adjudication decisions. I do not see how mediation will expedite return to work or rehabilitation interventions in the absence of this essential information. Work status information, when available, may be the source of dispute. The family physician's traditional role is as a patient's advocate. Family physicians do not wish to jeopardize the physician-patient relationship by making decisions which could affect the patient's benefit levels.

Given this situation, I propose that a roster of highly qualified medical referees—and "medical referee" is defined in section 1—external to the WCB with liability protection under subsections 76(3) and 76(4) be developed. These medical referees could be selected by the worker and employer or decided upon by the WCB if no consensus is reached. The role of the medical referee would be to clarify, in a timely fashion, medical fitness to participate in a medical and/or vocational rehabilitation program or return to work. Strict guidelines and a monitoring system would have to be developed to ensure the highest level of quality and fairness.

In summary:

(1) Terms used in the purpose clause need clear definitions imbedded in section 1 of the act in order to reflect the meaning intended by the legislators.

(2) Demedicalize work status information to facilitate the worker's return to work.

(3) Effectiveness and efficiency of rehabilitation counselling services are jeopardized by the absence of adequate rehabilitation counselling training programs in Ontario.

(4) Encourage qualified rehabilitation counsellors to design, with workers and employers, realistic work-site-based solutions.

(5) To create a supportive environment, employers and

labour must work together to eliminate or amend collective agreement clauses which discriminate against injured workers.

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(6) Nobody can provide better return-to-work solutions than the worker cooperating with the employer and the local union at the work site.

(7) WCB needs information from the Occupational Disease Standards Panel and the Institute for Work and Health and other agencies to develop policies regarding new developments in health sciences and related disciplines, as directed in section 65.

(8) Legislation is required to improve the controls by which medical and vocational rehabilitation services are selected and utilized.

(9) Return to work can be facilitated by the creation of a roster of medical referees external to the Workers' Compensation Board.

(10) Finally, If legislation does not encourage individual autonomy and independence, then it is not supporting rehab.

Thank you for your consideration.

Mrs Witmer: Thank you very much for a most refreshing and very professional presentation. I see coming through your presentation the need for the WCB to give very serious consideration to ensuring that the appropriately qualified individuals are in place at all stages to deal with the injured worker.

Dr Lacerte: That's correct. If you don't have the qualified people, then you'd better have a heck of a monitoring system and very clear policies.

Mrs Witmer: So no matter what this bill does, if we don't have the people with the expertise and the experience, it's not going to achieve any great gains?

Dr Lacerte: It's not as likely to achieve the same outcome. The vocational rehabilitation outcome at the board right now is not the greatest. Part of it is the fact that the people doing it are just not trained in doing rehabilitation counselling.

Ms Murdock: Hi. Good to see you again. I wanted to thank you, particularly too because speaking in your second language and making sure that we all understand is very important.

Number 8, for me in northern Ontario especially, "...to improve the controls by which medical and vocational rehabilitation services are selected and utilized"—we hardly have any physiatrists in northern Ontario at all. So when you suggest in 8, and having an independent roster in 9, where do we get them? How are we going to do that in terms of monitoring, selection, providing that to the worker and to the employer?

Dr Lacerte: I believe that even though I like very much physiatrists, there are other physicians—

Ms Murdock: And rehab counsellors.

Dr Lacerte: No, there are also physicians who might benefit from education that relates to return-to-work matters. As a matter of fact, if you look in Quebec, there was a bill, Bill 35, I believe—it was passed about two years ago—that made sure deans of faculties of medicine

provide some space in the curriculum for teaching medical students about work-related matters and work injury and so on, and that's a big lack. We're always fighting to have more time in the curriculum when we're on rehabilitation, but we're very few.

Ms Murdock: Yes.

Mr Mahoney: I want to particularly thank you for this, because without denigrating previous presenters, out of all the presentations I've seen here, this one provides more opportunities for solutions and I think you've really struck on some fundamental ideas.

I just have one concern. Number 2 says "demedicalize work status information," great idea, and 4 says encourage qualified rehab counsellors etc, 8 says legislation for improving controls, and 9 sets up a roster of medical referees, all excellent ideas. Number 6, however, says, "Nobody can provide better return-to-work solutions than the worker cooperating with both the employer and the local union at the work site." Why would you not include in 6 the medical referee or the rehab counsellors to work with the worker, the employer and the union at the work site and get them involved right on the site?

Dr Lacerte: If you read my book coming out in about two months—

Mr Mahoney: Just a minute. I'm into movies. Does it come with a movie?

Mr Lacerte: —that's exactly what I'm saying, that the medical community is there to meet the needs of the work environment and not vice versa.

Mr Mahoney: I want to commend my book to you, by the way, which is already out, and says exactly that.

The Vice-Chair: Thank you for that unpaid political announcement.

Michel Lacerte, thank you for taking the time out this evening and giving us your presentation.

SARNIA LAMBTON CHAMBER OF COMMERCE

The Vice-Chair: I call our next presenters, from the Ontario—the Sarnia Lambton Chamber of Commerce. Good evening and welcome to the committee.

Mr Gerry Macartney: Thank you. I know that was a Freudian slip, the Ontario chamber reference.

My name is Gerry Macartney, and I'm with the Sarnia Lambton Chamber of Commerce. I'm accompanied this evening by our president, Mr Lin Benway, and I do thank you for this opportunity. I don't have a book.

The Sarnia Lambton Chamber of Commerce, with its 965 member companies, is the recognized voice of business in Sarnia-Lambton. Our member companies employ over 26,000 workers and are comprised of both large manufacturers and small businesses.

Our recommendations reflect the general views and concerns of our members and are based on considerable expertise and experience. As such, they warrant serious consideration. We appreciate the opportunity provided through this process to comment on this important legislative initiative and welcome the opportunity to respond to any questions the committee may have.

The industries in Sarnia-Lambton are comprised mainly of petrochemical manufacturers and their related sub-

industries, and that's really the point I wanted to stress to you tonight, that we come here with a bit of a difference. We know you've heard from other business groups and the Ontario chamber and labour groups and so forth, but I really want you to understand that Sarnia and the petrochemical sector in particular across this province are different, and I'd like you to recognize that today. It's been estimated that over 80% of our area's economy relies on these petrochemical manufacturers in one way or another. It's also well documented that the manufacturing sector in Ontario provides over 75% of all WCB revenues. The petrochemical industry, you may know, is the third-largest manufacturing sector in the province of Ontario. It has some \$12 billion in exports and employs over 55,000 people.

Having said that, the committee needs to appreciate how vitally important it is that these industries remain competitive, particularly in the face of shrinking domestic markets and increasingly difficult global conditions. In short, we think we have a stake.

These companies and their employees contribute very significantly to the provincial tax base in Ontario as well as providing the bulk of revenue for our municipal coffers. As well, these industries provide a critical and highly desirable value added contribution to our provincial economy. Examples of this include gasoline, lubricants, anti-freeze, carbon black and fertilizers. Also, many other industries, such as automotive, pharmaceuticals, textiles, steel, plastics and rubber, rely totally on feed stocks manufactured in the Sarnia-Lambton area. There is a clear and well documented history of job creation via the multiplier effect associated with these industries.

Most manufacturers in the Sarnia-Lambton area are, in the main, globally based. These industries traditionally attract highly desirable corporate citizens who contribute greatly to the economic and social fabric of our community. As with other globally based industries, these organizations can invest future capital, and its corresponding job creation, anywhere in the world. There is no inherent reason for them to invest in the province of Ontario. They can and do invest in those jurisdictions that will maximize their return on investment.

Let's look at Sarnia-Lambton's record for a moment.

Industries in Sarnia-Lambton have a long-standing and demonstrated focus on safety training and performance. This awareness has been brought about by a series of programs and practices, including the Responsible Care Codes of Practice. Industries in Sarnia-Lambton have for decades been recognized for having the best safety records of any of the manufacturing sectors throughout North America. In fact, their consistently high levels of safety, coupled with their low levels of injury, are the envy of the industrialized world. As well, the severity of injuries reported in this sector are significantly less than those reported in other sectors. This is not chance. It's a product of sound business practice.

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The excellent work that has been accomplished in this community, and in particular in the petrochemical sector, must not be overlooked or compromised. Bill 165, in our

view, will in fact compromise this work and our future competitiveness.

Let's talk about WCB's fiscal accountability.

Through the Premier's Labour-Management Advisory Committee—PLMAC, which you've heard a thousand times this past week—the Ontario Chamber of Commerce urged the government to adopt the approaches and recommendations that were identified in that process. Clearly, Bill 165 does not do that.

Fiscal accountability and responsibility are essential to sustaining a workers' compensation system in Ontario. The government, through the introduction of Bill 165, has signalled that it is backing down from that challenge to significantly revamp the WCB system to have it become financially sustainable.

The purpose clause: Bill 165 proposes a purpose clause that outlines a blank-cheque provision of compensation and rehabilitation services. If a purpose clause is to be included, it must be balanced and complete, that is, the purpose of the act is to provide fair compensation in a financially sound manner—ring a bell?—with clearly articulated accountability; it should provide evaluation of proposed changes to benefits; and it will require ongoing monitoring of programs to realize better efficiencies while improving effectiveness. It is imperative, therefore, that the crown and its agencies be bound by the act to assure accountability.

As for experience ratings, this is the most sensitive area as far as the petrochemical sector is concerned. The employers and employees benefit from safe workplaces, I think we all agree. NEER—you've heard this before—the new experimental experience rating, and CAD-7 in the construction sector, have provided objective mechanisms for measuring and rewarding safety performance. The PLMAC had advised that NEER could be augmented by an incentive to encourage greater re-employment. In our view, the record on NEER speaks for itself. In short, it works.

The scheme being proposed under section 103.1 targets process and not results. In its attempt to address the original objectives of return to work, section 103.1 will in fact undermine the current success of the NEER program.

NEER has provided excellent incentives for good safety performance by reflecting that performance in the cost to business. Simply put, it's pure and it's simple. NEER cannot and should not be compromised. Any proposal to augment NEER in the area of re-employment must be objective, measurable and clearly designed to contribute to this focused agenda.

Further to our concerns on the experience ratings, it should be pointed out that industries have always been grouped together in accordance to sectoral definitions. These groupings are also regulated by experiential ratings. Such is the case with the petrochemical sector, where, as a result of excellent performance, this sector enjoys a substantially lower cost for WCB than the average, and the average we believe is about \$3.24 per \$100 of payroll.

In 1993, if you're interested in one statistic here, this

sector, the petrochemical sector, reported a 0.9 lost-time injury per 200,000 person-hours work. That's less than one reported injury for 200,000 hours of work, and that's due in large part not only to the employers. I think some credit, a lot of credit, needs to go to the employees and the workforce, and I'm sure Ken Glassco of the Sarnia labour council will reflect on that after we're done. So it's a joint effort, and it's well deserved. It's one of the best records in the industrialized world.

Industry sectors that have consistently outperformed the average should not be forced to pay for the poor performance of other sectors or industries. Should Bill 165 be passed into law, this indirect form of subsidy for others will seriously impact the competitiveness of Ontario's manufacturers. In theory, a better option might be to have employers pay for the WCB services that they use, or the claims. It's a theory. One average industrial rate could destroy the promotion of workplace health and safety, and that's the greatest fear from the petrochemical sector.

In conclusion, it's critical to ensure that workers who are injured on the job in the province of Ontario receive fair and just treatment. Similarly, employers who place a high priority on safety in the workplace, with the accompanying demonstrable results, should also receive fair and just treatment along with the appropriate tangible incentives.

The Workers' Compensation Board, as the name indicates, is a workplace accident insurance plan. As such, it must be managed accordingly. It is not, nor was it ever intended to be, an employer-funded, universal safety net.

Bill 165 does not represent progress towards a framework for assuring the long-term viability of the workers' compensation system in Ontario. As presently constituted, we can see no winners coming out of this new legislation, not the employees, not the employers and not the province of Ontario. Sarnia Lambton is of course not alone in this assessment, since the business steering committee, as you already know, has withdrawn its support for the implementation of Bill 165 as well as the advent of the royal commission on the WCB.

I think it's worth repeating that the business steering committee consisted of the Council of Ontario Construction Associations, the Ontario Chamber of Commerce, the Canadian Chemical Producers' Association, the Canadian Manufacturers' Association, the Canadian Federation of Independent Business, the Employers' Advocacy Council, the Employers' Council on Workers' Compensation and the Retail Council of Canada, to name a few. In other words, 85% of Ontario's employer base is represented by the BSC.

Regrettably, this legislation condemns us to the errors of our past and will not significantly relieve the monumental debt burden that has been and continues to be accumulated by the board. New legislation must be drafted that takes into account our concerns and those of the manufacturers and businesses throughout Ontario. Only sound reasoning and effective consultation can produce those results that are required by all Ontarians.

I just wanted to add that our fear, and if there's a

message that can be taken back to the government, is that we have once again asked business to consult with labour. There was a historic accord developed by consensus by those two parties and the government has chosen to ignore it. I'll let labour speak for itself. Apparently they're not all that pleased with the results either. But business is clearly not pleased: not pleased that every detail wasn't followed in the bill, but very displeased that the accord was not even understood. There were no checks and balances. There was no checklist offered back to business to say: "Well, we've made some changes. Do you agree with them?" That was never offered. So it's not surprising that that group has withdrawn its support for the bill and for the advent of the royal commission.

I worry about what will happen the next time the Premier, to quote him, looks for business and labour to work together to produce a new system. I worry about what happens the next time, the next initiative that comes along, legislative or otherwise, where business and labour are asked to sit down again. Where will the trust be? Has that been breached, and is it recoverable?

Thank you very much for your time.

Mr Hope: One of the questions I have, and it's just because you were talking on behalf of the chamber of commerce representing a number of businesses and you only spoke about the petrochemical industry in itself, so I have to ask you a question: Do you feel that cutting benefits and services is the only way to control the unfunded liability?

Mr Macartney: I don't think it's ever been suggested that it's the only way, Mr Hope. I understand where your question's coming from, but it is not the only method, and I don't think the Ontario chamber or our chamber has ever recommended that.

Mr Ferguson: Thank you for your presentation. You have suggested that "Bill 165 does not represent progress towards a framework for assuring the long-term viability" of the board. Can I ask you, do you think the PLMAC represented progress towards a framework for long-term viability?

Mr Macartney: I'll answer yes on behalf of both parties who negotiated the accord. It wasn't perfect, but I don't know that there has ever been a deal drafted in this province that's been perfect. But I think when you take organized labour and for all intents and purposes the largest group of business representatives ever collected under one roof and they arrive at an accord, it almost behooves the government to adopt those policies. But regrettably they were not.

Mr Ferguson: Yes, and it was unfortunate that business decided to walk away from the table and decided not to sign the agreement, but my follow-up question is, have you supported PLMAC? You said yes, that would move the board towards a sense of financial responsibility.

Under PLMAC, the unfunded liability by the year 2013 would be about 55% of the debt. Under Bill 165—and nobody has challenged this; nobody has said that in fact this is not the case—the projected unfunded liability will be about 55%. So can I ask you to explain your position?

Mr Macartney: The numbers that you quote, from my understanding, have never been authenticated and are soft numbers at best. So if PLMAC agreed to those numbers, it was on a soft basis and not on a—

Mr Ferguson: They're conservative numbers, you're correct, and they're numbers that have come out of the Ministry of Labour as well as the Workers' Compensation Board, and they're numbers that have been used time and time again by people that you purport to represent.

Mr Macartney: If the financial accountability through the framework that has now been discounted from the accord—and that was one of the premises of the accord, that there be a fiscal responsibility framework. Having removing that, the government is now no longer accountable for that fiscal accountability under this bill, which worries business, of course. So the only answer I can give you is, if you'd left it alone, according to the accord, although it wasn't unanimously agreed to, it was a consensus nevertheless.

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Mr Mahoney: The first thing I have to do is correct the record, because I think from time to time Mr Ferguson and others like to say things and get it on the record and then they're supposedly true.

Business did not walk away from the table under the PLMAC process. They made a deal. The deal was agreed to by all parties involved and they were betrayed by the government. It was after the announcement—

Interjections.

Mr Mahoney: It was after the announcement, very clearly, of appointing Lynn Williams—

Ms Murdock: That's absolutely garbage.

Mr Mahoney: —or the leaked rumour of appointing Lynn Williams to chair the royal commission that business walked away from the table.

Interjections.

Mr Mahoney: There was an agreement. Let's just be clear about that. I want to assure you of one thing. The next time the Premier calls business and labour together, she will listen to them.

The question that I have, sir, and thank you for your presentation—

Mr Klopp: You forgot to clap.

Mr Mahoney: Believe me, that day will come.

You talk about how a better option might be having employers pay for the services they use. In essence, making everybody schedule 2, I guess, is what it would ultimately do. The concern that I would have about adopting a system like that would be, how do you ensure, in all fairness, equal protection for all injured workers across the province in dealing with employers if they're just left? Admittedly, there are good employers and bad employers. I don't think anybody can deny that, and it's the bad ones who drive up the costs for the good ones. So how do you ensure in fairness that an injured worker injured on a job site through no fault of their own—under this system an injury occurs. How would they get treated fairly if we were just sort of to leave it up to the employers to pay?

Mr Macartney: I understand the question. We emphasize the words "in theory." It's only a theory and I don't think it's a workable one. Businesses like the petrochemical sector understand fully that not everyone can afford to pay the kinds of services that are required through injured workers on smaller companies etc. We understand that, and we understand that presently some sectors are paying part of the freight for others who might not be able to afford it. But the imbalance that will be created by Bill 165, if passed, will threaten that balance and it will also threaten the incentive for sectors like the petrochemical sector to execute good workplace safety. They've earned it and they'd like to keep it.

Mr Mahoney: Let me ask you to be very specific about your concerns about the purpose clause. If a statement around financial accountability is not included in the purpose clause, what can that lead to in the interpretation in the act, and do you have any specific sections of this bill identified?

Mr Macartney: Not specifically, but in a word, gridlock. If you have a government that is not made accountable by its own bill and yet has policy guidance over the WCB, how can you ever control expenditures? On one hand, you're asking a board, notwithstanding that the president wasn't invited, to control expenditures in a fiscally accountable manner, and yet the government will control policy for an extended period of time. I don't think they work hand in hand. In fact, they are contrary.

Mr Mahoney: Thank you.

Mrs Witmer: Thank you very much for your presentation. The one thing I've certainly learned today is that the petrochemical industry has an excellent safety record. We heard from Novacor this morning and they pointed out their record in the past few years.

The other thing they pointed out in talking to the issue of experience rating was the fact that at the present time obviously their assessment rate is very low because of the excellent safety record, and if we were to go to a uniform assessment rate, that would triple for them. It would mean an additional \$1 million. Certainly they expressed the concern that when that is taken into consideration, companies such as Novacor, and obviously others in the province, would have to seriously consider whether they would make further investments.

I think that's one issue that has been totally overlooked by the government and also some of the unions that have appeared before us. If you drive up the cost of the system further for the employer community, you are also going to, in the end, eliminate jobs for employees. I don't know what discussions you've had in the Sarnia-Lambton area concerning that, but has there been discussion about the impact?

Mr Macartney: Quite clearly, the end result of disproportionate increases to those WCB premiums is lost jobs. Nobody likes to say it, but that's the sad truth. Every time there's a hit—we like to refer to it as another rock in the knapsack of business. Every time there's one of those hits, the very people these pieces of legislation are allegedly designed to help are the ones who end up getting hurt.

I stated in my presentation that, by and large, petrochemical industries are globally based and, as such, they will invest their money in the most hospitable jurisdiction they can find. If Ontario is not perceived to be that way as a result of WCB costs etc, then it is defined as non-hospitable and they will move. That's not to sound threatening. I hope for our sake in Sarnia-Lambton they don't pick up their tent and move. But for new investment, particularly for new capital expenditures, why would they look to inherit the debt already incurred by WCB as a burden to their investment? Why wouldn't they look elsewhere? It's a question the government needs to ask itself.

Mrs Witmer: I know in another conversation I had with someone in the auto industry, that was an issue they were also looking at: Will you bring the contracts into Ontario or will you go elsewhere?

Mrs Cunningham: The only thing I'd like to add is that during the hearings today there have been a number of companies from southwest Ontario that have appeared before this committee and there's been so little recognition of the good work they have done in the area of rehabilitation and workers' compensation.

I wanted to ask you a question with regard to the present system now. When there are rates applied to companies for workers' compensation and those companies improve their track records when it comes to rehabilitation, getting people back to work, how do they go about having these rates reassessed and how long does it take to have them reassessed?

Mr Macartney: Under the present system?

Mrs Cunningham: Yes, right now.

Mr Macartney: Not as long as you might think. That's really the beauty of the NEER experiential rating system, that in the subsequent year it adjusts itself and your premiums are adjusted accordingly. But it takes a year of experience to determine that. If you throw NEER out, you jeopardize that balance and you jeopardize the incentive for any business, any sector, to want to improve itself. That was the whole idea behind the NEER system to begin with.

Mrs Cunningham: When was NEER introduced?

Mr Macartney: In 1987.

Mrs Cunningham: Mr Chairman, just a point for the committee: NEER was introduced in 1987 and the reassessments on behalf of the companies in this area have been done by this Labour minister of this government, sometimes waiting two, three, four years for this reassessment. Once NEER caught up and was given an opportunity to get in place after two or three years, we started to see the fruits of the labour of the system work.

I can tell you that the minister, Mr Mackenzie, in spite of Mr Hope shaking his head, has visited a number of companies, including Cuddy, which is here this afternoon and will be here in the next presentation. There ought to be some recognition for the expertise of those companies as in fact they advise this government on how we can make things even better, and there is none.

I just wanted to make that point on your behalf. No recognition for anything that's been worked out in the

last five years; nothing.

The Vice-Chair: Thank you, Mrs Cunningham.

On behalf of this committee, I'd like to thank the Sarnia Lambton Chamber of Commerce for their presentation this evening.

JIM PATERSON

DAWN JANVEAUX

Mr Jim Paterson: My name is Jim Paterson. I'm presenting the presentation tonight. I'm from Champion Road Machinery. With me I have Dawn Janveaux from Cuddy Foods and Marianne Hoare from St Thomas-Elgin General Hospital. I'd like to comment that the previous two presentations are going to be tough to follow.

I'd like to begin by explaining who we represent. We represent 14 employers in this area, and this brief is the joint effort of those employers, representing an approximate employment level of 25,000 and a total assessment of approximately \$27 million. These employers are not just from the London and Middlesex county area, but employers in Essex, Elgin, Huron and Kent counties. It represents our joint view. Employers from Essex and Kent counties may make some brief comments on these issues when they appear in front of the committee tomorrow afternoon.

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We intend to address a number of issues contained in Bill 165; namely, vocational rehabilitation, reinstatement, medical reports and permanent disability supplements. Other issues such as the purpose clause, experience rating and governance will be presented by employers representing the London, Middlesex, Essex, Elgin, Huron and Kent employer community during their time slots over the two days of committee hearings in London.

Vocational rehabilitation and reinstatement: We have decided to deal with these two issues as one, since the two are, in the case of many injured workers, completely intertwined. We are somewhat pleased with the additional rights given to employers, allowing their involvement in the delivery of vocational rehabilitation services, whether it be (1) to facilitate a return to work with an accident employer, or (2) a program designed to give the injured worker the skills to become employed with a new employer.

As well, we are not opposed to the principle of expansion of mediation services. In this regard, we would caution that mediation services can only be positive if they are voluntary and if they do not hinder the appeal process where one of the parties is opposed to mediation.

However, one specific subclause for mediation services is, in our judgement, quite improper. Paragraph 72.1(1)6 provides for mediation services after the board has determined, on its own application, that the employer has violated re-employment obligations contained in section 54 of the act. It seems to us that mediation is wholly inappropriate at that point and that the right given to a worker to object to a determination by the board is ludicrous. Workers have rights to bring their own complaints to the board under subsection 54(11). In effect, they are not, or at least ought not to be, a part of any so-called mediation under a determination made under the

proposed amendment to subsection 54(11), giving the board a unilateral right to make a section 54 determination.

That said, our most serious objection is to the two new punitive aspects of vocational rehab and reinstatement; namely, sections 10 and 27 of the current bill. Section 10 allows the board, presumably adjudicators or case workers, on their own initiative, to determine that an employer has violated the re-employment provision of the act. Section 27 would allow case workers to determine that employers had failed to cooperate in the provision of vocational rehabilitation services to workers.

Both changes, in our submission, are ill-considered and will only add to the adversarial nature of a system which is already far too adversarial. There is already a near crisis at the hearings branch and at the appeals tribunal, with requests from both workers and employers flooding in at record pace. It is hard to imagine that these two sections will do anything but add to the problem. Certainly the employer community represented here warns the committee that findings under either section, if enacted, will result in a deluge of appeals to any negative decisions on reinstatement obligations and vocational rehabilitation cooperation.

Section 54 contains provisions allowing injured workers to bring a complaint where they believe their re-employment rights have been violated. These changes, which would allow the board to initiate such action, would inevitably create a hostility between case workers, adjudicators and employers far more serious than any remedy it would provide. It would throw a chill into the free flow of information exchanged by the parties. Finally, it would surely bring about a saturation where employers would want these case workers and adjudicators to be called as witnesses at the appeals to outline why they made the determination they did. Since these employees are not compellable, the frustration and anger at being unable to confront the accuser would only grow.

We believe the current complaints-based system contains more than adequate protection for workers. Moreover, if a worker does not believe his section 54 rights have been violated and if the worker does not complain, why should the board itself become an advocate?

The next sentence I'd like you to strike, at the bottom of that page.

Employers have for years complained that they often have little say in the provision of vocational rehabilitation services, particularly where the injured worker is unable to continue with the accident employer and the vocational rehabilitation services are aimed at securing new employment. Now that that problem has been overcome, the legislation provides penalties for lack of cooperation.

The section, as drafted, does not indicate the nature of the penalty or the basis on which it may be imposed. We do not know if a single incident would trigger a penalty. We do not know if there would be a series of warnings such as those given to injured workers before they are cut off vocational rehab benefits. We don't know if employers would receive the same treatment as workers when they demonstrated a new willingness to cooperate.

We don't know if that cooperation would trigger a cancellation of the penalty. In short, we have no answers.

It is our submission that the committee should simply scrap the amendments to sections 10 and 27. They will create added hostility, particularly between employers and individual board employees, that could poison the working relationship. The system needs to be less, not more, adversarial. These two sections simply add to the problem, and both put board employees right in the middle of the difficulty.

Medical reports: Given the treatment of employers in terms of vocational rehabilitation and reinstatement, it is incomprehensible to us why the same legislation has chosen to tie the hands of the employer community in facilitating the most basic of all vocational rehabilitation plans and the most fundamental of all reinstatement provisions; namely, a return to work. But that is exactly what is contained in this legislation. The bill, for the first time, attempts to address the two questions at the very core of all return-to-work situations:

(1) Is the worker able to return to work?

(2) If the answer to this first question is yes, what restrictions or precautions are necessary to ensure that the return to work can be done in a manner which respects the worker's compensable injury?

There are some who believe these matters are essentially non-medical in nature and others who believe they are medical. That is a debate for another day. What we find completely unacceptable is a provision that return-to-work information cannot be given to employers without the consent of the worker.

Employers are not asking questions about diagnosis. We're well aware that such information invades the worker's right to privacy. If some employer does ask such information because that employer is ignorant of the law, doctors not only have the right, but the obligation, to protect the confidentiality of the information. The appropriate method for release of diagnostic information is the one currently in use, through an objection to a decision of the board on an issue involving medical diagnosis.

Employers need to know what actions they need to take to facilitate the return to work of injured workers. There is no place in that equation for any worker to have the right to frustrate that process. I'd like to add at this point that it is our understanding that Mr Thomas, in his appearance last week, told the committee a worker would not be penalized for withdrawing his consent. That I find rather strange. Yet Bill 165 contains the words "with the consent of the worker." To be blunt, a worker who withholds his consent can completely frustrate the ability of an employer to determine whether a worker can return to work, and, if so, with what restrictions.

It is our submission that those words should simply be removed. The regulation-making powers of the cabinet contained in the bill give the government all the power necessary to define and limit the information to be provided. The addition of a consent provision serves no useful purpose whatsoever and can simply be used to frustrate the very return-to-work process which the

government says it desires. It speaks to a co-called "right" which is present in no other insurance scheme simply because it is not a right but a roadblock. It is adversarial in nature and has no place in this legislation.

Permanent disability supplements: The committee is well aware of the thousands of injured workers in receipt of benefits under subsection 147(4) of the act who are now eligible for additional supplements of \$200 a month under this legislation. We are not here to debate the propriety of the government's basic determination to give an additional amount of money to those supposedly in need.

I will say, however, that there are indications that little careful analysis of the requests by individual workers for entitlement under subsection 147(4) was ever undertaken. As a result, we believe many workers are in receipt of benefits who do not meet the criteria established under this subsection. This is particularly disturbing when one considers that the cost of the subsection 147(4) benefits, together with the additional \$200 a month to be provided by the amendments, results in a total cost of more than a quarter of a billion dollars each year. At a very minimum, some review of decisions to pay the supplement is in order immediately.

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We want to make some comments on the new \$200-a-month entitlement. We do not believe the additional moneys should be tied to the basic pension; rather, they should be tied to subsection 147(4) and should end at age 65. The section which triggers this additional payment now ends at age 65 and the financial support to injured workers is transferred to the Old Age Security Act. Those injured workers who can demonstrate the additional need will receive benefits through the guaranteed income supplement, which pays up to an additional \$460 a month for a single and \$300 a month for each if you're married, with no outside income. It simply makes no sense to add to the financial burden of a workers' compensation system whose liability is already approaching \$12 billion when an alternate system already exists.

If the committee chooses not to follow that recommendation, may we at least suggest a further review of the injured worker's finances at age 65 to ensure that the \$200-a-month supplement is required and that pension and other benefits payable at 65 are not sufficient. The current reviews at 24 and 60 months provided for in subsection 147(13) do not adequately recognize retirement income sources.

In conclusion, Mr Vice-Chair, we hope the committee will seriously consider our respectful submission to it. Both employers and workers have an important stake in ensuring that the workers' compensation system be as efficient and effective as possible. It is with that objective in mind that we make our submissions to you today. You'll note in the back of that section we have a summary for your later viewing.

Mr Mahoney: Thank you for the presentation. In a minute, let me just go to the medical issue. I'm not sure that it would even be legal to do what you're asking, that a doctor would have the right to give out information without the consent of the patient. Just forget whether or

not it's an injured worker; think of your own situation. If your doctor gave information out to your employer because you had phoned in sick and weren't at work and your employer phoned the doctor and he or she just gave that information out, I think—

Mr Paterson: But I don't think we're suggesting that. We're suggesting that the doctors in here have the right and they are obliged to protect the confidentiality of that information. We're not suggesting that they do give it out. We're suggesting that there's a system already in place that protects the worker from that information being released and it makes no sense to build in another system that replaces one that's already in existence.

Mr Mahoney: There have been some suggestions by some people that a standard, pre-arranged, pre-agreed-to form by everybody involved be developed for providing the information that would limit the type of information—in fact, one presenter whom you referred to—to demedicalize that information and make it simply information that would help in facilitating return to work or alternative work. Rather than getting involved in the issue of deleting "with the consent of the worker" and all of that kind of stuff and everything that implies, would you support a standard, agreed-to form that would clearly spell out the type of information that would be released and what it could be used for?

Mr Paterson: I think our committee would be willing to take a look at that, yes, because if you demedicalize it, in essence, you're not handing over any medical information. One thing that has to be recognized in that is that the place where we employ people and the place where Marianne would employ people are two different types of work and therefore one form may not fit everyone, but you might be able to come up with sector-specific-type forms that would do exactly as you are describing.

Mrs Witmer: Thank you very much for your presentation. It's an interesting grouping there that you've put together, lots of different places.

Mr Paterson: I would like to comment on that. We put a lot of work into this and we were fortunate enough to have some assistance from the government. I won't say which department we were involved in, I think it's obvious, but at the same time we had orders from that particular department head that we had to withdraw, which is a discussion for another day. We went through four days—and Tannis remembers my name, I think, very well. For four days we were in communication to make sure we could get our spot back, and we were very distraught about a government that represents employers forcing us to drop out. But fortunately we were able to gather that group together and continue.

Mrs Witmer: I'm quite impressed by the diversity of the group and I really do appreciate your presentation, I think, based on the fact that there is that type of diversity. Certainly you've identified some of the real problems with the bill.

You stressed a couple of times that you are very concerned about the punitive aspects of the legislation and also the very adversarial nature of some of the pieces of the legislation. It's already a very adversarial system to begin with and certainly there are components that

now make it more so. Is there any one piece in particular that you think will make for more confrontation?

Mr Paterson: For more or for less?

Mrs Witmer: More confrontation between the employer and employee communities, or one particular part that stands out.

Ms Dawn Janveaux: If I could just answer that, I think the one thing that concerns myself and our employer is the advocate type of role that I understand the adjudicators are possibly going to take with making judgements on whether or not an employer has met its vocational rehabilitation or reinstatement obligations. I feel that's very unfair. They don't have the tools, as it was mentioned before, or the training in order to do that. We have enough advocate teams out there and there are different groups that you can go to to get assistance with that. So speaking personally, I think that's going to be our biggest hurdle.

Ms Murdock: Actually, I was going to ask a somewhat similar question to what Mr Mahoney was having, because Dr Lacerte had identified that and called it by a special name. The deputy, in his remarks on Monday, also referred to the committee that the board will be putting together of all of the stakeholders—employers, workers, health care givers and so on—to formulate how that forum is going to be and exactly what information will be in it.

The language during the discussions between labour and management and the PLMAC with regard to the \$200-a-month entitlement is what I want to address my comments to. That was probably the one big bone of contention between both sides in all of those discussions, how you were going to address the needs. There was a recognition by everyone that there were vulnerable workers out there, pre-1990, who were significantly affected and had very low monthly incomes. Both sides agreed that they existed and that something should be done. The question then came down to, what are we going to do?

Labour said \$200 a month, and the PLMAC accord, dated March, basically said: "We can't reach any agreement on this and we're leaving it to the government to make a decision. But labour wants the \$200, and management recognizes the need but doesn't want to do that."

Mr Paterson: If I can—

Ms Murdock: No, go ahead.

Mr Paterson: My understanding is that they don't want to make it a blanket \$200. We're talking 40,000 workers here, and my understanding is they wanted to take \$200 and just send it out to 40,000 workers and not bother finding out if all 40,000 under this system—

Ms Murdock: No, that's what you're saying in your presentation.

Mr Paterson: Yes.

Ms Murdock: You're saying there's been no examination of those people who were eligible for subsection 147(4).

Mr Paterson: Yes.

Ms Murdock: Some haven't even applied for it.

The Vice-Chair: Your question, Ms Murdock?

Ms Murdock: I guess what I'm saying is that I'm surely not hearing you say that those people don't deserve that money. They have the injury, they can't work and they deserve something in recognition of that.

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Ms Janveaux: I guess I just have one comment regarding that. We look at the aged in general. If you look at the aged in general, I guess my question would go back to—

Interjection.

Mr Mahoney: People like us; old people.

Ms Janveaux: Aged. I'm sorry, the aging population. So my question would go back, I guess, to you—

Ms Murdock: That's a declining population.

Ms Janveaux: Yes, a declining population.

Interjections.

Ms Janveaux: What happens to them is another issue.

Ms Murdock: They die.

Ms Janveaux: Not when they're 65, they don't.

Ms Murdock: No.

Ms Janveaux: I guess I'm looking at it that there is a system to give all individuals at the age of 65 some kind of funding to help with the later years. So you're saying that the injured workers need more?

Ms Murdock: Did you read the Globe and Mail this morning, in terms of how that aged population is living?

Ms Janveaux: Oh, I know they are living terribly.

Mr Paterson: I have one closing thing I want to speak to.

The Vice-Chair: Very briefly.

Mr Paterson: Yes. Mr Mahoney made a statement on August 22 which I'd like to throw back at the committee.

Mr Mahoney: Oh, no.

Mr Paterson: I'll have you know I taped that and transcribed it, by the way. He made a good point.

Mr Mahoney: All right.

Mr Paterson: One of the points he made is: "The most important, the most significant decision in an entire file is generally made by the most inexperienced person in the system. That's not their fault. Take a look, and I would encourage you to look, at the British Columbia model."

Believe it or not—and this is what really throws me; I didn't realize this until I heard you say it—our own government is asking employers to do nothing but train, train, train, and yet we turn around and we give these adjudicators three weeks of training.

Ms Murdock: That's wrong.

Mr Mahoney: That is not wrong; trust me.

The Vice-Chair: Order, please.

Mr Paterson: Sharon, if I could just continue, I would like to point out—

Interjections.

The Vice-Chair: Order.

Mr Paterson: No. I thank you for the conversation.

The Vice-Chair: A quick point.

Mr Paterson: My point is that whether it's three weeks or 12 weeks, it's still not right. As far as I'm concerned, you have somebody there making a decision on an injured worker's future and you give them incidental information. You need to give them a one-year minimum amount of training in order for them to make a decision that is going to do that worker and employer justice. So if you're going to spend money, spend it on training.

Ms Murdock: I agree.

Mr Paterson: I'm reinforcing it.

The Vice-Chair: Order, please. On behalf of this committee, I'd like to thank Champion Road Machinery and your committee for your presentation this evening.

COMMUNICATIONS, ENERGY AND
PAPERWORKERS UNION, LOCAL 914

SARNIA AND DISTRICT LABOUR COUNCIL

The Vice-Chair: I'd like to call forward our next presenter, from the Sarnia and District Labour Council. Good evening, and welcome to the committee.

Mr Ken Glassco: Hi there. How is everybody? My name is Ken Glassco, of the Sarnia and District Labour Council and Local 914 of the Communications, Energy and Paperworkers Union.

The Workers' Compensation Act has been in place for about half a century and during that time it has been changed, altered, amended, rewritten, added to, deleted from and massaged to a point where today it is a very large bureaucracy in which a claimant sometimes gets the feeling that they are in the land of Oz and their only allies, if any, are the tin man, a lion and a scarecrow.

Mr Mahoney: Bob Rae, Bob Mackenzie and Floyd Laughren?

The Vice-Chair: In fairness to the presenter—

Mr Glassco: That's right, give me a break now. Come on, I know you've been here all day now.

Mr Mahoney: Fire away.

Mr Glassco: Okay. Good day. My name's Ken Glassco, president of Local 914 of the Communications, Energy and Paperworkers Union, representing workers at Polysar, Cabot carbon, BASF, Union Gas, Welland Chemical, Nova Petrochemical and our 1,400 members. In addition, I'm presenting this brief on behalf of the 5,500 members of unions of the Sarnia and Lambton area who are affiliated to the Sarnia and District Labour Council. I'm here to present a brief to you on the potential changes to the act and my beliefs on these changes or lack of change.

I'm going to preface this by saying I am not an expert on these changes. I don't know all your fancy numbers and sections and all the rest of it. I've gone through all the information and I've digested what I think is important, looking at briefs and newspaper articles and all the rest of it.

My first area of concern is subsection 51(2). I personally have some serious reservations with the sharing of personal medical information regarding an employee returning to work. Part of my job as president of my

local is the handling of most of our WCB appeals and any problems associated with a claim or in return-to-work situations. There might be some circumstances where this procedure would be the only method of returning to work, but too many times this medical diagnosis will or could be used as a tool for the employer to circumvent its obligations and duties on a return to work.

In addition to this, this diagnosis could be used—and I stress, could be used—in the future to deny or prevent opportunities for the claimant in the normal course of work through job progressions. I believe that the employee's physician should have some very serious input into these placements, but a medical diagnosis is not required. This legislation has been very difficult enough in the past to develop a proper re-employment, without providing the employer with confidential medical records.

My next concern deals with the experience rating system. Now, I'm not really going to deal with the statistics that Gerry Macartney from the chamber of commerce related to. I'm going to tell you a little story here. It's close to it but it's not on the button for experience rating.

A well-known petrochemical company walked in and bought out a huge petrochemical operation in the Sarnia area and, in a couple of years, sold off a very large portion of that to another petrochemical company, keeping only a very small part. In addition to the property, the buildings and the people, the seller was out-negotiated—now, those are my words—with regard to all long-term disability claims and WCB claims of the past and was saddled with all the liabilities of past WCB claims for the last 45 years. This was in writing and part of the sale agreement, to the best of my knowledge. I've never seen it, but this is what I was told.

The seller, now with about 100 active employees, was and still is accountable for the 45 years-plus of workers' compensation cases. Imagine the cost, imagine the bureaucracy and the confusion involved every time an old claim surfaces, even though the employee with an old injury is now working for the new company. This injury was part of the original operation before the first sale. I now have to deal in the claims process with the intermediate employer—I'll call them "the seller"—who had little or no involvement at the time and still doesn't, because they sold them off.

This problem might not be directly related to the legislation, but it does point out some of the inequities with regard to experience rating. What it does is lay all the financial responsibilities of an operation with regard to experience rating on to the small operation that can ill afford this type of overhead.

In some lost-time cases that I am aware of, to an employee, financially, it doesn't make any difference whether you're on WCB or a private insurance claim. So in some cases, why report it or claim lost time when it is less hassle to book yourself off sick and receive the same pay or, in some cases, more pay. The company usually does not mind, as it keeps their statistics proper and reportable lost time to a minimum. The peer pressure from your fellow workers is tolerable because you were

not the one to destroy the safety record and reset the clock for the million man hours without a lost time.

Now, they're not all like that; everybody doesn't operate like that. But there are cases that I'm fully aware of, ones that I've had to deal with. Accidents, illnesses and lost times are hidden under pay codes, private insurance plans, ignorance of the laws by employees and straight coercion by some employers. They are also hidden under the guise of "return to modified duties," "light duties," and "partially disabled and cable of performing some work." As a union, we try very hard to ensure that our members are represented properly, and as such, all accidents and injuries, whether they be lost time or not, are recorded and reported, not only for the present but for the future.

What's been happening lately is that, with the problems with all the insurance companies—and I think if you're around the London area, everybody's heard of Confederation Life—we are now getting into hassles about who you belong to, because if you walk in and claim compensation, the insurance companies are trying to wipe their hands of you and say, "Forget it; we're not interested in you; you're a compensation."

Now, you have to go through and you have to prove that. So when you're trying to prove that, where are you? You're in limbo sometimes. So with the costing and all the costs associated with medical benefits, weekly indemnity and long-term disability, some of the employees and some of the claimants are just left out in the middle of nowhere.

With regard to the inflation, my information tells me that those who were injured prior to 1990 will be receiving an increase of \$200 per month. I applaud that direction. I would hope that the government will not forget those who had retired prior to 1990 and to my knowledge will be missed by this increase. Many of them have had their personal pensions, company pensions or union pensions seriously eroded as a result of their accident, injury or illness at a time when they could ill afford it. If service was lost or broken or if payments into private/company plans were not allowed, the payout of pension to a victim of a workplace accident or illness would be seriously reduced.

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I think we all know how absence from work affects the pension payout, especially in the later years (58 to 65). The terminology in pension plans is fairly well known: "Best 36 months' continuous service in the last 10 years" is an example. Take a guess as to what happens if you miss the last two years because of an occupational disease. Your calculation will be based on what you were making prior to your leaving the workplace, you will have lost in all probability two years' service and your pension will be based on old wages. You are immediately behind before you start.

Another concern is the inflation protection formula. I believe that a cap of any amount would be detrimental to those on pensions and of serious consequences to the younger workers who have to stay unemployable for the remainder of their life. I believe that indexing should be full and those injured should not be penalized any more

than they already have been, although the return-to-work and rehab process of the board is much better than in the past.

Inflation today is under control or, if not under control, at least minimal. To have a cap will only punish those who have been injured and over the years will slowly erode any gain they might have made in previous years. I do not feel that the removal of the cap will make or break the Workers' Compensation Board in Ontario and create any more liabilities than we already have.

I would like to take this opportunity to commend the government on the bipartite board of directors that will give those with the most at stake a direct input into decisions that will affect them in the upcoming years regarding the policy and administration of the board. Hopefully, with this arm's-length approach the board can get on with its real mandate as stated in clause 1.1(a) of the act, and I'm just reminding everybody, "to provide fair compensation to workers who sustain personal injury arising out of and in the course of their employment or who suffer from occupational disease and to their survivors and dependants."

In closing, I would like to leave all of you with a few thoughts. I think that in 1994 much more should be done to ensure that labour and management in all areas of mutual concern, through or with their government, should be mandated to address these same concerns in some form of bipartite type of resolution process. I don't know what that is exactly, but I do believe that these same parties, as in the board of directors, must deal with their concerns at the shop floor/local level. Whether it be similar to joint safety and health committees, joint environment committees, training boards, health councils, employment equity or whatever the topic of the day might be, that is where it counts in the final analysis.

I will ask this question of all of you at these hearings today: How many joint submissions have you heard from both a union and a company? I would suggest very few—I don't know for sure—and more than likely none. That's a shame because I do believe that there are parts of this legislation that are of benefit to all. But because of our boundaries, our sacred cows and fears we back off and approach our problems from opposite ends. To address our concerns with return to work, special placements, modified duties, they should be addressed by those who are affected, and that is the company and the union at the local level.

To rely on a third party, whether it be WCB, a government or whatever, is not to my liking. I firmly believe that our issues of the injured, sick, diseased and physically disadvantaged must be dealt with by the two abovementioned parties. When it's legislated or mandated it becomes bogged down in the land of Oz that I mentioned earlier and could take months or years to become unbogged. Our yellow brick road is not quite as clear as it may seem.

In addition, I would like to thank all those employees of the Workers' Compensation Board in Ontario for their attention and cooperation in dealing with the thousands and thousands of claims that cross their desks each day. I realize that it must be sometimes a very unrewarding

and stressful situation to be dealing with another person's "claimants, union reps or company reps" and their problems each day. And I personally want to thank all those adjudicators, clerks and everybody else I've dealt with over the years.

I will try to answer any questions, but like I reminded you at the beginning, I am not an expert.

Mr Witmer: Thank you very much for your presentation, Ken. I shall remember this even though you're at the end of the day and we've heard a lot. I do appreciate your comparison to the bureaucracy and the land of Oz and the claimant and the allies, the tin man, the lion and the scarecrow. It's quite an apt comparison and most appropriate.

I think you asked a question which is extremely important and that is, how many unions and employers did come before this committee? To my knowledge, I don't think we've had any and certainly, if we're going to resolve the issues that face the injured workers and the employees and the employers in this province, it will be absolutely essential that those parties do sit down and resolve the issues facing them. So, on behalf of our party I thank you for your presentation today.

Mr Hope: First of all, Ken, I want to congratulate you on your presentation, especially near the end, where you recognize the claims adjudicators. You know, especially if you deal with them on a regular basis, you understand the workload they have and stress relationship that is there about dealing with case loads.

One of the comments that keeps being brought up that I think is important to try to bring out in perspective is how frustrating it is for workers, and I know you and I have had conversations over the years about the issues of workers' compensation and trying to deal with it. You clearly indicated in your presentation today, why aren't there joint presentations being done when we know there's a common goal to resolve the problem; and I'm wondering, how do we then take it from this legislative body and into our workplaces where, for instance, workplaces might not have the strength of a strong union or even the strength of a union? They might have a union but it might be a weak one, in that sense.

Mr Glassco: I don't know. It just seems to be that there has to be a better mechanism to do it. I didn't lobby the employers as much this time around as I have in other submissions over other topics over the years. This particular case here—summertime, vacation and I kind of wasn't around, so I didn't really do it. But I remember before with changes to the Labour Relations Act, whatever, there were a lot of points in there that we agreed on, even some of the ones that I worked very closely with. But do you think I could get them to a joint presentation with me? There was just no way. It seems like we polarize ourselves and, "If I sat up there with Glassco it's just not going to go right," or my union rep's going to say if I sat up there with Union Gas or whatever it's just not right, "We've got to have you there and you over there and everybody's going to kind of listen," you know.

There are problems with some of the weaker unions or no unions. Through the labour council I get numerous

calls from people and they're needing assistance and they really get lost. We don't have a compensation office in Sarnia. We deal with London all the time and I'll tell you it is really a nightmare. I know they're trying because I've talked to them all. I talked to a couple of them today, in fact. You know, you phone down, you're trying to do something, they're trying to find out where their claim is and basically all you get is answering machines and whatever because everybody is just so busy. I just feel that there's got to be a lot more done somehow on the shop floor level, whether you're talking return-to-work or whatever.

We've got to deal with that problem there rather than letting governments try to do the work for us all the time. That is difficult in some cases because there are some irresponsible employers that don't care and there are some irresponsible unions that really don't want to get along that much either.

Mr Mahoney: Your point is a good one, by the way: Did we have any joint submissions? I can't think of any but I can think of numerous groups that agreed with the fundamental principle that the bill should be withdrawn. I've heard injured workers say it should be withdrawn; I've heard numerous business presenters say it should be withdrawn.

The other thing that's been fascinating is, I've sat here and listened to unions in some instances come forward—one earlier today with 17 specific objections to the bill recommending 17 amendments to the legislation. I asked them, "If you disagree with 17 aspects of this bill and disagree so strongly with them and you're not successful in getting those 17 amendments through, would you want the bill withdrawn?" The answer was, "No, we think there are other things that"—it's just mind-boggling. If you don't like it that much, why in God's name would you want it to pass? Why wouldn't you want some homework to be done to make it better?

Mr Glassco: You saw mine. I mean, I'm not totally ecstatic about everything but it's a middle-of-the-road-type thing. There are some good things and there are some maybe negative things in there. I'm not asking for it to be withdrawn. Somebody else might have, but that's up to them I guess.

Interjections.

The Vice-Chair: Order. It's Mr Mahoney's time.

Mr Mahoney: Oh, it's still my time. You've outlined a couple. The point is that I can understand someone who comes forward with a couple of things he disagrees with, but to have as many as 17 and then still, in a very obvious partisan way, pat all the government members on the back kind of makes me sick.

The issue of the medical reports: Would you support a common form maybe done on a sectoral basis—the analogy was given earlier, a suggestion by an earlier presenter—to de-medicalize that information and just give the stuff that specifically relates to return-to-work? Would you support something like that?

Mr Glassco: As the gentleman from Champion said, I'd have to have a look at it also. As long as it was used for what it was meant to be used for and not for some-

thing else. My problem is that sometimes, in some places, medical information is used on somebody's weekly indemnity claim somewhere or for some other case. But if it referred to "as it applies to this job" or whatever, then I don't think I would have a problem.

The Vice-Chair: On behalf of this committee, I'd like to thank the Sarnia and District Labour Council for its presentation this evening.

Mrs Joan M. Fawcett (Northumberland): Just a question to ministry staff or if someone has the answer: If older workers are on a permanent disability pension and when they turn 65, then they're eligible for CPP and the old age pension, do they then get all three pensions, is what I'm wondering. And so if the older injured workers now, who are let's say 70, would be eligible for

this extra \$200 then that would also—I mean, if you passed this. I guess I'm wondering if anything is ever subtracted.

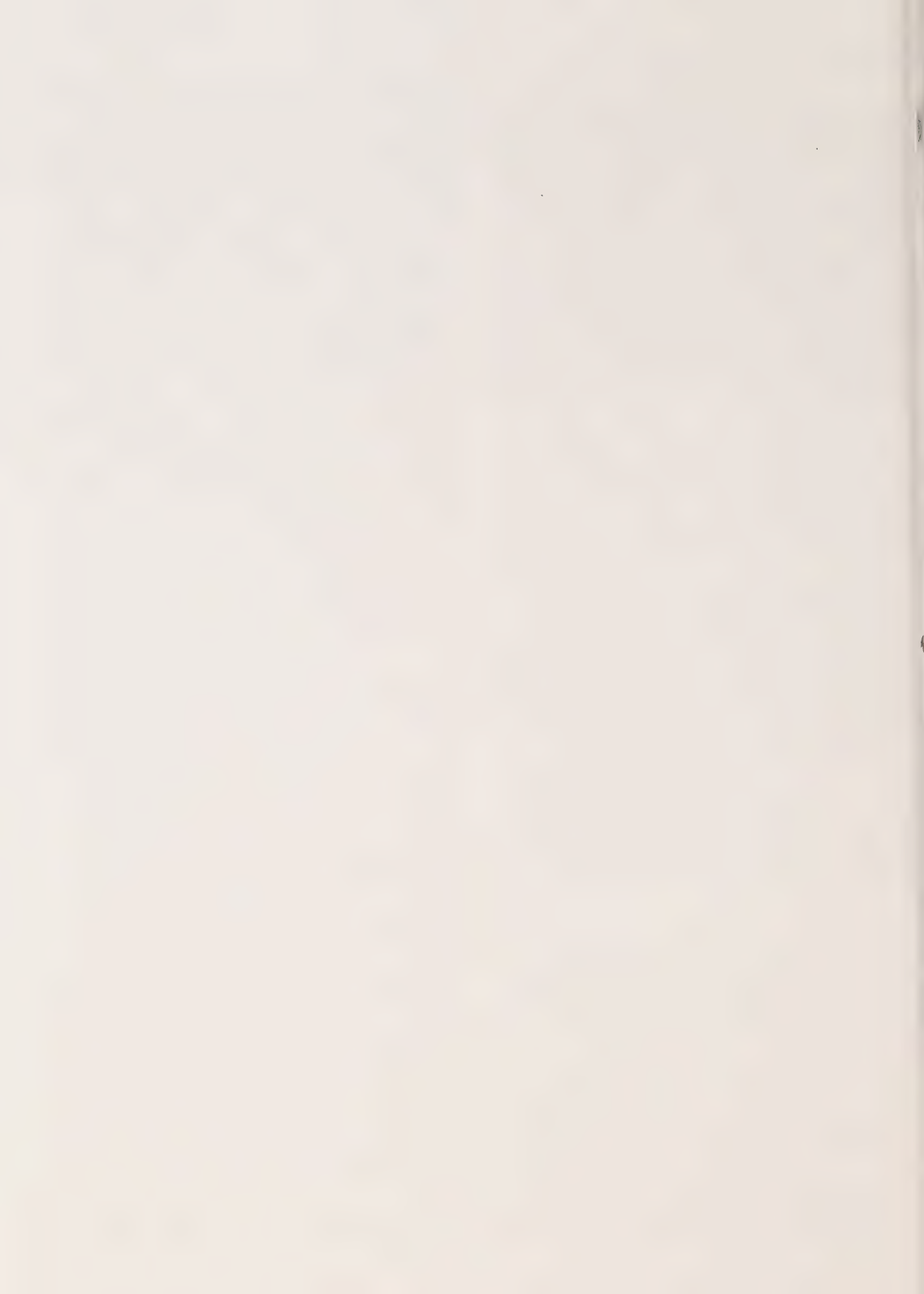
Ms Murdock: We don't know about the federal program and how that would work, whether or not there would be some clawback, but I think it's been stated that in terms of the social assistance program there would be no clawback.

Mrs Fawcett: So there would be no clawback from the WCB.

Ms Murdock: Right.

The Vice-Chair: Seeing no further business, this committee stands adjourned until 9 tomorrow morning.

The committee adjourned at 2113.



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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***Acting Chair / Président suppléant:** Klopp, Paul (Huron ND)
Conway, Sean G. (Renfrew North/-Nord L)

***Fawcett, Joan M.** (Northumberland L)

***Ferguson, Will,** (Kitchener NDP)

Huget, Bob (Sarnia ND)

Jordan, Leo (Lanark-Renfrew PC)

***Murdock, Sharon** (Sudbury ND)

***Offer, Steven** (Mississauga North/-Nord L)

Turnbull, David (York Mills PC)

Wood, Len (Cochrane North/-Nord ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Cunningham, Dianne (London North/-Nord PC) for Mr Turnbull

Fletcher, Derek (Guelph ND) for Mr Huget

Hope, Randy R. (Chatham-Kent ND) for Mr Wood

Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Conway

Winninger, David (London South/-Sud ND) for Mr Waters

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan

Clerk / Greffière: Manikel, Tannis

Staff / Personnel: Richmond, Jerry, research officer, Legislative Research Service

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Legislative Assembly of Ontario

Third Session, 35th Parliament

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Tuesday 30 August 1994

Journal des débats (Hansard)

Mardi 30 août 1994

Standing committee on
resources development

Workers' Compensation and
Occupational Health and Safety
Amendment Act, 1994

Comité permanent du
développement des ressources

Loi de 1994 modifiant la Loi
sur les accidents du travail
et la Loi sur la santé
et la sécurité au travail

Vice-Chair: Mike Cooper
Clerk: Tannis Manikel

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Tuesday 30 August 1994

Mardi 30 août 1994

The committee met at 0904 in the Radisson Hotel, London.

WORKERS' COMPENSATION AND
OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL
ET LA LOI SUR LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

GUELPH CHAMBER OF COMMERCE

The Vice-Chair (Mr Mike Cooper): I call our first presenter, from the Guelph Chamber of Commerce. Good morning and welcome to the committee. Just a reminder, you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you would keep your remarks somewhat briefer to allow time for questions and comments from each of the caucuses. Please identify yourself for the record and then proceed.

Mr Michael Annable: My name is Michael Annable. I'm here representing the Guelph Chamber of Commerce, business out of Guelph. We're making a presentation today on behalf of local business in Guelph in regard to Bill 165. I apologize for not having a written format for the committee members, but we were a last-minute stand-in so we'll forward one in the next couple of days.

In reviewing Bill 165 and the history behind it, one of the greatest disappointments on our part was the fact that most of the amendments contained in Bill 165 ignore the recommendations that came out of the business caucus of the Premier's Labour-Management Advisory Committee on the workers' compensation process. We're hoping that this standing committee will be open and listen to the communication. I'm sure they will take an honest and effective look at Bill 165 and the effects it has both on the system as well as the worker.

We're hoping that any changes that are made to the act will be done after considering the overall impact of those changes. Will they reduce administration time and improve the Workers' Compensation Act? Will they encourage the reduction of work-related accidents? Will they require the board to be financially responsible and will they require the board to be accountable to all stakeholders?

We don't think the current changes under Bill 165 will accomplish this. The proposed changes, as we see them,

appear to give the government more direct control over the Workers' Compensation Board and policy development. It will result in the payout of more money when the board is already paying out more money than it is taking in. It will increase the total unfunded liability. It will force the WCB to expand worker entitlement and increase overall compensation costs.

Proposed modifications to the incentive program, the NEER program, seem somewhat abstract. This NEER program is the only opportunity for business and the board to reduce overall compensation costs. An example we've seen in there is the fact that the board is looking at being able to penalize employers who do not have an effective health and safety policy, yet the board continues to pay out claims when employees are injured when they violate the health and safety act as well as company health and safety policies. So on one hand, they seem to want to enforce health and safety programs, yet on the other they do not support it by just paying out benefits regardless of the reason for injuries. It's also proposing—the changes will increase the complexity of re-employment cases. It would be nice if they would just deal with re-employment the way it is and deal with the backlog of cases they have, as opposed to trying to make it more complex.

The Guelph Chamber of Commerce supports the basic PLMAC recommendations from the business caucus. We would like to see the unfunded liability eliminated, that loopholes in the proposed pension index formula be eliminated and that the Friedland formula is applied across the board on pensions. We'd like to see benefit levels reduced; ensure fair compensation, but also encourage the worker to return to work more quickly—in some cases, where workers are off in the short term for less than six weeks, their take-home and compensation is greater than what they take home at work; that's hardly an incentive for an employee to return to work—reduce costs of the future economic loss awards; and maintain and build on the success of the current NEER program.

In closing, the presentation is short but we have some clear recommendations that we think need to be considered. We feel that Bill 165 should be withdrawn immediately; that legislation should be developed that will ensure that the Workers' Compensation Board is financially viable, accountable to all stakeholders; ensure the system is more responsible to its stakeholders and more responsive; that the purpose section of the act have a clearly defined statement regarding the financial accountability of the system and the board of directors; and that a stringent requirement be put into the act that

all future changes should be required to pass a detailed cost-benefit analysis prior to being considered.

Our final recommendation is that employers be allowed to opt out of WCB in favour of carrying identical insurance through a private carrier. Most companies have experienced through their own weekly income and long-term disability plans that their premiums are far less than what they currently pay to support the Workers' Compensation Board. Thank you.

0910

The Vice-Chair: Thank you. Questions and comments, about five minutes each.

Mr Steven W. Mahoney (Mississauga West): I'll start with your last point. If employers were allowed to opt out, as you put it, what would you recommend we do with the unfunded liability?

Mr Annable: That's one point that has to be considered, but revenues would have to be generated for that to be dealt with and that may have to be a portion of what employers pay—their per cent to opt out of the plan.

Mr Mahoney: I've seen some studies, from Alberta particularly, done by private sector consultants on privatization. It clearly showed that premiums would go up and benefits would go down, because insurance companies wouldn't touch the program with its current level of benefits, so it would impact injured workers. Your premiums would go up, according to the study that I've seen, which was a pretty reputable study.

The problem I have is that if you allow employers to opt out, in essence what you're doing is allowing the WCB to compete with other private insurance companies, and on the surface that seems attractive. The problem is, the WCB would then become the Facility, similar to what we have in auto, where only the real bad actors who couldn't get coverage, by Zurich or whoever else was in the business, would wind up at the WCB. Your WCB claims would shoot through the roof, in my estimation, and I don't think you'd solve that problem. In any event, I appreciate the suggestion. I've certainly heard it from many different people in the business community.

I want to ask you about small business. The small business, let's say under 20—and particularly under 20 because that's the threshold where they're exempted from the health and safety requirements under the act—the small business under 20. If a WCB police officer was to walk in to determine the health and safety practices and other programs of that employer to reduce injuries and occupational diseases he likely wouldn't find very much. The large business, of course—the plants, the GMs, whatever—they can afford to have full-time health and safety instructors and teachers and everything on staff; they do. It's not a problem for them; they see it as a good investment.

The small business person, I think, is the one who is really going to take it in the neck with this type of bill and with this attitude because they're trying to survive, they're literally hanging on by their fingernails. While health and safety is critical, whether you've got 19 employees or 119 employees, the fact of the matter is the

small business doesn't have the facilities, the wherewithal, the money, the time to devote to health and safety.

I can see them generating fine revenue in the hundreds of thousands and maybe even millions of dollars out of 103.1, subsection (2), (a), (b), (c) and (d); (d) being, "such other matters as the board considers appropriate." Pretty broad-sweeping powers they're going to get.

As a representative of small business in many ways, I'm sure, do you have any comments on that?

Mr Annable: There's a lot of concern with that section, both small and large employers because, in essence, you end up with two or three people judging the effectiveness of your health and safety program if you have one in place. Currently, that responsibility rests pretty much with the Ministry of Labour in their workplace inspection program. If they take the role that they're taking as a consultant versus an enforcer, then you're going to see changes in health and safety.

I think a lot of smaller companies, if the pressure goes on, are going to go out, either out of business or out of the area. In the company I work for, we've seen a lot of pressure in those areas in comments from suppliers and other people we deal with that they just can't afford to do the things they're being asked to do, as well as stay in business.

I think the act, both the health and safety and the Ministry of Labour, need to look at playing a supportive role as opposed to a punitive role. Behaviour modification's not going to come from the form of penalties, it's going to come from the form of being there and helping them and giving them some programs to work with. That's where the NEER program comes in, because there is financial incentive for the employer to have an effective health and safety program.

Mrs Elizabeth Witmer (Waterloo North): Thank you very much for your presentation. It's always good to see the Guelph chamber.

You mentioned the privatization, and I guess that was an option our party had considered at one time. However, the biggest obstacle does seem to be what do you do with the unfunded liability. Of course, that's growing daily and we're up to \$11.7 billion now. You talked about the need for privatization, but have you looked at what could be done, how it could be achieved?

Mr Annable: I think within the Guelph area there's been lots of talk between some of the prominent local businesses about privatization, just based on looking at our own experiences with short-term and long-term disability and the premiums. We haven't addressed the overall issue of the unfunded liability, but perhaps that's one area we'd be happy to provide some input on and I'd bring that back to them and hopefully we can provide some input in our written submission.

Mrs Witmer: I guess if that is a serious option for this province, there needs to be a lot of research done because, unfortunately, I've come across some of the same information as Steve has indicated he has, that it might not be a totally viable alternative.

What are the major concerns of the small business

community in Guelph at the present time surrounding WCB? Where are they facing the biggest obstacles?

Mr Annable: I think the return-to-work provision that we see—as much as it seems to point the finger that employers aren't responding. It's a difficulty in working with the board and actually getting people back to work, as much as our employers who don't want to bring people back and workers who do not want to return to work either. That's where a lot of frustration comes in when medical evidence appears to show that the person's capable of modified work, yet trying to deal with the board and get someone involved can take months, as well as the appeals, any decision reviews that have to go on. It seems to take—I guess, the backlog now for the hearings branch is close to a year. If you do have an issue, it takes for ever to be resolved and from a company perspective those costs continue to be charged to you and you feel that the claim is not justified. That's a real deterrent.

I've spent numerous years working with Employment and Immigration and the UI system, which is far bigger than comp is and their mandate's to hear appeals within 31 days. That's how they're rewarded from a management perspective. It seems almost ludicrous that someone can have a claim that's not valid and take eight to nine months before you get a chance to really voice your opinion to a quasi-neutral party.

Mrs Witmer: That substantiates, I think, a lot of the concerns that we certainly hear from the small business community, as well as from the employee who can't get redress as quickly as he or she would like. I just recently heard from a small employer who would not have his case heard—and it was right in the letter—until 1996. That seems to be grossly unfair.

I guess if we take a look at the Alberta system, that's one thing they've been able to do. They have someone in place now, a new CEO, and they've managed to facilitate the process, a much more timely return to work and expedition of all of the claims, and they've reduced the cost of the system. That's what we need to take a look at. Unfortunately, this bill, I believe, is simply going to make for more bureaucracy, more process. It's not going to help the injured worker; it's not going to help the employer.

Mr Annable: We agree with that.

Mr Will Ferguson (Kitchener): Thank you for attending this morning. I have one question. A number of groups have made the erroneous claim that this bill totally ignores the Premier's labour-management accord when in fact the very cornerstone of that accord was adoption of the Friedland formula, and that's embodied in the bill which will ensure the financial viability of the board to the year 2014. As you well know, the business community supported that accord, supported the Friedland formula and supported that the board ought to be, by the year 2014, at 55% of the unfunded liability. Well, this bill does exactly that when you look at the financial game plan that's been laid out.

I guess I get a little confused when individuals then, like yourself, appear before the committee and say, "Wow, you know, the Workers' Compensation Board is

going to hell in a hand basket," and nothing short of drastic measures, such as immediate reduction in benefits, as well as taking and adopting the Friedland formula and applying that to all injured workers, would resolve the problem. I'm just wondering how you reconcile that.

Mr Annable: My understanding, from what I've heard on the business caucus side of the PLMAC, is that they agreed to the Friedland formula being applied in a broader spectrum than it is in Bill 165.

0920

The second thing is that a lot of the financial accountability that's written into the act was excluded from the purpose statement, and the purpose statement that was agreed to by both sides. I think I know fairly well that when politicians or bureaucrats look at a piece of legislation in amending it, it's the purpose of the act that overrides all the other changes, and unless that financial accountability gets rolled into the purpose behind the Workers' Compensation Act or the initial purpose clause, that's not going to happen.

Mr Ferguson: Given your statement, obviously you don't agree—and the majority of players in this bill certainly do agree—that it would be financially responsible if the board ended up at a ratio of 55% unfunded liability by the year 2014. Of course, previously the business community agreed with that. They said, "Yeah, that makes perfect sense." Could you tell me, in your view, where you think the board ought to be by the year 2014 if 55% obviously to you is not acceptable?

Mr Annable: I think they have to make a bigger stride towards reducing the unfunded liability to zero. I think they have to have a balanced balance, or a balanced budget. They have to take in what they spend and build up to cover their future costs. From a business perspective, if we lost \$2 million a day, the banks aren't going to support us very long.

What's happening is that business is looking at global competition, and the more global we have to be, the more we have to look at our own internal costs. Compensation is one of the largest employee benefit costs that employers have and the one that we have the least control over. If things like NEER are taken away, we have absolutely no control over our workers' compensation costs. That's a real concern. We need to have some way of being rewarded for good performance from compensation so that we can see some improvement in that overall program, but we really believe the unfunded liability must be reduced to zero.

Mr Ferguson: By the year 2014?

Mr Annable: As soon as possible.

Mrs Dianne Cunningham (London North): Maybe sooner.

The Vice-Chair: On behalf of this committee, I'd like to thank the Guelph Chamber of Commerce for their presentation this morning.

CANADIAN AUTO WORKERS, LOCAL 27

Mr Tim Caire: My name is Tim Caire, vice-president, Local 27, here in London. Sitting beside me is Randy Mason, recording secretary. Local 27 represents over 4,000 members in London, with 19 different work-

places. Before we start, we're fully aware that Local 444 yesterday presented the brief that was prepared by our national union and we go on record as supporting the brief by our national union. So we thought it would be best today to discuss some experiences that we're having in the London area with workers' compensation and with injured workers. I hold the position of a workers' representative as far as WCB and Local 27, and Randy has dealt with many situations.

First of all, I've heard the previous presentation and I've heard the question of unfunded liability and so on. We can address those issues later, but there's one thing that we want to go on record. There is no way this union is going to support reducing the liability on the backs of injured workers, and we have a real concern that the Friedland formula does that. After all, whether the unfunded liability is caused by injuries in the workplace or mismanagement by the board, it certainly is not caused by injured workers in the province of Ontario.

We have had several experiences in the past year in early return to work and I'd like to kind of put a human face on what we see. I see workers like John, Cindy, Manuel, Richard, Bill, Paul, Maria, workers who are returned to work early under the VR plan, who have returned to work on so-called modified jobs, who are returned to work because maybe a regional medical adviser at the board deemed that this worker was so-called fit to return to this type of work, and the worker, after attempting to do that work, has ended up going back off and into a lengthy appeal system because the board is of the opinion that the worker was capable of performing the work and the worker's doctor is of the opinion that the worker was not. We end up going through all the way at times to a hearing, which could take up to a year, and that worker suffers needlessly because I can definitely show that the majority of the times that we go in front of a hearings officer, the award is brought forward in favour of the worker that the job indeed was not suitable based on the medical evidence from the worker's doctors or specialists.

The other problem we have in that area is that it could take up to a year. The worker is not informed. The worker who's cut off compensation benefits is more often than not maybe seeking social assistance. The worker is not informed by the board that what they should be doing is seeking work elsewhere or so on while they're waiting for their appeal to be heard. The worker feels they should be going back to work with their accident employer; they can do some work in there. But the board does not inform the worker of this, so when we do have successful decisions in favour of workers, what that ends up is that the worker is paid for a certain period of time and not paid or reduced to 50% because the worker should have been seeking work elsewhere.

Workers are not aware of these technicalities in regard to payment for lost time and we end up going through a whole other appeal, once again starting right from the adjudicator and right up into the hearings level. Now, if you want to talk about cost, there's some cost management: appeals that really in a lot of ways would not be necessary if injured workers were informed properly of

their obligations. We have paid specific attention to the pressure on the bill as far as even increasing the early return to work, to get workers back to work early. We think the concept is a good concept, but how is that worker going to be returned? Case workers have a tendency not to get hold of worker representatives in unionized workplaces in order to identify the suitability of a job, to aid the worker in whether that job's suitable. The board does not, in our mind, have the skill ergonomically to study jobs, whether or not that job would be suitable to an injured worker. So we have a real fear that we'll even be going back sooner and we'll be right back to the same problems that we're still dealing with today.

We want workers to get back to work and workers want to get back to work. I've heard some innuendos that workers would rather stay home. Well, I can tell you honestly that in my experiences dealing with injured workers that is not what I've seen. I've seen workers who are bored, who have lost what they believe is a very, very important part of their life, their job. They are not saying, "I don't want to go back." They're saying, "I want to go back, but I want to go back to a job that I can do with my disabilities." I think at times people are away from dealing with the workers on a one-to-one basis like Randy and myself have dealt with. We have seen the pain and the suffering that injured workers are going through in this province.

Employers are talking about wanting to reduce the costs. Well, we say you can't have it both ways. In order to reduce the costs, I think employers have to really take a look at what we do as far as health and safety in the workplaces. It's been our experiences with this globalization, this competitiveness attitude, this lean-and-mean production, that workers are being asked to do more due to workforce reductions and that the accident rates per capita have not been reduced. Workers are still getting injured on the job, a vast majority of it on repetitive strain injuries, which signifies an increase in the type of work and the work that workers have to do in order, as the corporations put it, to become lean and mean and competitive in this world environment. We may say that employers were fully in support of some of the things that are in place now in this country, like the free trade agreement, which brought in this lean-and-mean mentality of survival of the fittest.

0930

We have some concerns with the experience rating, that it really only deals with workers who are going off.

I have come from a workplace that I've worked at in London here for 15 years, which I see will be making a presentation later today. I have seen more workers, what we call the walking wounded, in the last year and a half than I've ever seen in my prior 13 years in that workplace, workers who all of a sudden have jobs of licking envelopes and mailing little forms and so on in order that it does not affect the employer's liability. We consider that sort of an area a good way of hiding real accidents and the severity of accidents, but it definitely is not an indication of how safe an employer's workplace is.

We suggest that in returning workers to work in organized workplaces, employers and unions form committees

in order to properly identify jobs that workers are returning to and that the goal should be of returning the worker to their pre-injury job. Way too often we've seen in our experience that the first thing they do is look for a suitable job elsewhere, rather than looking at the pre-injury job and, if necessary, making modifications to that pre-injury job in order to accommodate the worker in that pre-injury job.

The whole idea of suitability causes problems in the workplace in that workers are placed into certain other what they call easier jobs. It causes disruptions as far as other workers feeling that injured workers are going into these what they call easier jobs and there's not enough onus to put the worker back to the pre-injury job.

My understanding of the legislation and my understanding of the human rights laws in this province are that the company can accommodate a worker in a pre-injury job with modifications to that job provided it does not cause an undue hardship to the employer. There are many employers in this city where an undue hardship would be the substantial, substantial amount of money in order to accommodate a worker to their pre-injury job.

That's about all we have for our presentation.

The Vice-Chair: Thank you. We have about three minutes for each caucus.

Mrs Cunningham: Thank you very much. I really appreciate you coming before the committee today. What I learned in listening to you were some pretty good specifics, which I jotted down. I hope you do make some notes for us. What you've really told the whole committee, I think, is that this is a very complicated system.

There are many areas where you've talked about the need for some experts to make decisions in the health area, or maybe non-medical area, as we heard yesterday; that the board isn't always helpful in giving people options for their return to work or otherwise; that the case workers are often not good communicators. I'm just writing down what I think you've told us. And most of the first part of your presentation said to me that this is day-to-day management, lack of communication, lack of trained people, maybe lack of caring on behalf of both, not just the board but sometimes the employers themselves.

So I'm totally convinced now that if we changed nothing, we could probably improve the performance of the Workers' Compensation Board and of the system itself by making people more accountable. You used that word yourself.

Mr Caire: I wouldn't necessarily agree with changing nothing. There are definitely some areas, and several areas in the bill—

Mrs Cunningham: I didn't say change nothing. I said if we changed nothing and worked better with the areas that you brought to our attention today, which I wrote down because they affect the people who come into my office, many of these workers. About 50% of the time of one of my employees is spent on these cases, working for people who have been injured.

Mr Caire: The only thing I would be concerned with is the statement of not caring. I think in all fairness to

many of the workers at the board, it's not a situation of not caring; it's a situation of a real case overload. I've dealt with many adjudicators and case workers through the board and there's no doubt that the case overload is great.

Mrs Cunningham: But you also mentioned that the system takes too much time, and actually in this particular legislation we have four or five areas of the whole process where there will be more processes to follow.

Mr Caire: The one area that impresses me, which I hope works, is that the case worker can now bring forward an appeal on reinstatement on their own rather than it being worker-driven. This is quite important to us, provided the case worker does do it, because we have had experiences in workers not knowing that they can file a complaint. It's worker-driven, at this point, reinstatements.

Mrs Cunningham: Okay. The only other point I'd like to make basically, and you probably know it, but we heard yesterday from representatives of the construction industry, and I thought all of us were pleased to know that both in compensable injuries, medical aid cases, and fatalities, the fatalities/aid injuries have dropped sometimes more than 68%, considerably, since 1965. I think that's good for families and also good for Ontario. I just wanted to point it out because you were talking about an increase, but in that industry we were all made very much aware with the statistics and I wanted to bring it to your attention. But I thank you.

Mr Derek Fletcher (Guelph): Thanks, Tim. That was a pretty good presentation.

One of the things you talked about, the committee as far as finding suitable work for an injured employee returning to work—I've been on comp myself and I know what it's like to go back to work when you're not ready to go back to work, and some of the jobs that are given just aggravate the injury a little more. I know that my doctor played an important role as far as I was concerned in going back to work after an injury. He got involved to the extent that he was saying, "No, that is not suitable work." Do you think that physicians should have a role? You talk about having a workplace committee, but should the chiropractors, physicians, doctors have a role in deciding what is suitable work?

Mr Caire: I think it's very important, especially the physician who is attending to the worker having a role in it. Much too often some of these decisions are made by an RMA who really hasn't even seen the worker. So I think it would be very helpful for the physicians to have a role in it.

Mr Fletcher: It should be the physician who is attending the patient, not just the company doctor or something like that?

Mr Caire: The company doctors do tend to have a bias.

Mr Fletcher: I don't know. I just think it's someone who does attend. Is that putting an undue burden on the medical association, on doctors? I know in Guelph—the reason I say this is because my doctor and a few other doctors really do want to get involved in finding work

because they're tired of seeing these people coming back in with aggravated injuries.

Mr Caire: Several of the workers I deal with, their doctors and insurance specialists have been more than helpful and more than willing to help on several occasions because they see the toil that this is placing on the worker. So I believe the medical community, based on my experiences, is more than willing to help patients get back to some meaningful employment, because you also cause some major psychological problems here which compound the whole situation.

Mr Fletcher: I don't know if it's like this where you're employed, but I remember that if a person hurt himself at home and went on weekly indemnity, that was fine, but if he was injured at work and on workers' comp, there was suitable employment. There were other jobs, alternative jobs, that wouldn't be found if it were not a WCB case.

Mr Caire: Yes, and my experience has been especially if they can get to the worker before he or she gets out of the plant. A lot of times, once they're out and they're already getting the benefits, they're not as quick to bring them back. But if they can get them before they're out that door, all of a sudden all of these jobs appear that weren't there before.

Mr Mahoney: You referred to the presentation by Local 444 of the CAW and said you agreed with their presentation. Just a question; it's curious to me. There are 36 sections in this bill. Eleven of them are housekeeping of the nature of section 7, where it says, "The English version of subsection 43(11) of the act is amended by striking out 'industrial disease' ...and substituting 'occupational disease'." So it's a housekeeping matter. There are 11 of those.

That leaves 25 which I might call substantive sections. Local 444 strongly in their presentation disagreed with 17 of them. That leaves eight sections of this bill that they support. They do not support 17 of them. How can you ask that this bill be passed, if you agree with their presentation, and you're opposed to such a huge number of the sections of this bill?

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Mr Caire: I believe we'd be doing an injustice to workers if we did not put forward our deep concerns and our opposition to certain aspects, but we'd also be doing an injustice to workers if we did not support the things that are going to help them. We believe that Bill 165 is really at this point the best we can get, although there are a lot of areas that we have major concerns with.

Mr Mahoney: I could appreciate that position if you said: "Out of 36 sections of the bill, there are eight that we support. We've got a problem. Can we not go back to the drawing board? Can we not sit down with the government and try to rewrite this bill? Can you, committee, not make recommendations to support our concerns?"

I could understand that, but to just say that even though you support eight out of a total of 36, it just leaves me shaking my head and wondering if there aren't some strong, partisan politics involved in all of this and not necessarily concern for injured workers.

The statement in the Local 444 presentation that I'm assuming you agree with—since we don't have a written document from you, I'll use theirs—says: "Are the employers who are complaining loud and long about the current unfunded liability proposing to pay more money towards the board's fund to ensure full funding? No, of course not. They rather seek to cut pensions and other entitlements through the Friedland formula, which erodes indexing."

The employers are not implementing the Friedland formula; this government is, in this bill. If you support their statement, strongly opposed to implementation of the Friedland formula, how can you ask that this bill be passed?

Mr Caire: Well, Mr Mahoney, if you're going to go forward and fight very strongly to oppose that part of the Friedland formula, you'll have our full support.

Mr Mahoney: No, you don't understand. What I'm supporting—

Mr Paul Klopp (Huron): He understands very well.

Mr Mahoney: What I'm supporting is not the issue here. In fact, we recommend the Friedland formula, but that it be used to pay down the unfunded liability, not that it be spent again. What I want to know is, how can you, and Local 444, who purport to represent injured workers, justify the position of saying that you support this bill but you're opposed to the de-indexation, which I will openly admit takes money away from current injured workers and gives it to other injured workers? Rather than taking money away from all injured workers and paying down the unfunded liability, it gives it to other workers. It's a complete juxtaposition that would indicate to me that this is just pure partisan nonsense.

Mr Caire: My understanding is that the Friedland formula does not take money away from current injured workers and give it to other injured workers but that the Friedland formula saves money for employers in the province of Ontario, and not so much—

Mr Mahoney: If it does take money away from injured workers, would you support it?

Mr Caire: We don't support the Friedland formula.

Mr Mahoney: You see my point? It does take money away because it de-indexes their pension, which is money right out of their pocket, and it goes to other workers.

Mr Caire: Right.

The Vice-Chair: I'd like to thank the Canadian Auto Workers, Local 27, for their presentation this morning.

Interjection.

Mr Mahoney: I'm not bitter. I don't know how you can say "on the one hand" and "on the other hand."

The Vice-Chair: Order, please.

Mr Mahoney: I know how you do it. You guys have been doing it for four years.

ELLIS-DON CONSTRUCTION LTD

Ms Denise Peters: Good morning, Mr Vice-Chair, members of the standing resources committee and, though I have my back to them, fellow stakeholders. I'm Denise Peters, the corporate manager of workers' compensation for Ellis-Don. My presentation today speaks not only to

my own personal interest with regard to Bill 165 but it speaks to Ellis-Don's concerns with 165, as well as to a multi-employer presentation and their concerns with regard to 165.

In particular, we are 15 employers encompassing 26,000 to 27,000 employees in the London geographic area. The interindustries related to are the hospital sector, the municipalities and related service sectors, transportation, manufacturing and of course construction.

I'm going to specifically speak to issues dealing with return to work. Noting that, I have highlighted the issues that are common between the interindustries, and then in the not-as-dark print I have put down my concerns and those of Ellis-Don. I am not going to read verbatim everything I have presented to you. I'm going to draw your attention to what I consider to be the highlights and request that you give the due consideration to peruse the document in its entirety at a later time.

To that end, I would like to introduce Dawn Janveaux, who's sitting to my left. She is the health and safety director of Cuddy Foods Products, Canada operations. If there are going to be any inquiries with regard to the non-construction sectors, Dawn has kindly volunteered to respond to those queries.

I would like to start with my opening comments, because they're important with regard to the entire contents of the submission. Prior to commencing, I want to say however that as an employer representative I am disappointed with the current situation of the workers' compensation system as implemented by the board, as interpreted by the Workers' Compensation Appeals Tribunal and as directed by the government through past and current legislation. However, my disappointment, I can say, is and has been partially tempered by the fact that I've had the true pleasure of working with a few knowledgeable, rational and professional individuals at the board.

However, the dilemma that I and other employers are faced with when reviewing and considering the underlying objectives of the proposed elements of Bill 165, lies within the reasoning of the board and government to achieve the goals that have been constantly espoused since the hearings have commenced: If only employers would prevent accidents and minimize the outcome of accidents, ie re-employ or reinstate, then costs would decrease and fiscal responsibility would be realized. The key means to achieving this objective is mandatory inclusions of specific health, safety, vocational rehabilitation programs and policies for employers only.

Furthermore, a corollary assumption of the hypothesis is that the absence of these additional tools, in of course a bipartite configuration, has caused there to be too many lost time accidents. Hence, this is why costs of the system are so high.

Our concern with such logic is that it can be reasonably established that if the initial hypothesis is false, then by deduction, any and all of the achieved objectives, ie the remedial actions, or the conclusions arising out of that and how to implement the remedial actions, will be flawed, and perhaps fatally. Thus, let's examine this hypothesis.

Information presented to the committee from such sources as the Council of Construction Associations in their submission of August 25, 1994, as well as the London and District Construction Association's new submission of August 29, 1994, has clearly established that province-wide as well as interindustry the frequency of time loss accidents, which takes into account the relativity of man-hours, has decreased over the last 10 years, from 1982 to 1992, while in construction, as we like to constantly emphasize, it's been a dramatic increase, 62% in fact for the period 1987 to 1993, which just happens to coincide with the implementation of the CAD-7 experience rating system.

Juxtaposed against the declining accident frequency was the fact that the average cost per claim had risen 517% during the same time period.

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Let's look at the premises of what the objectives are.

Timely and early return to work: It's been stated again and again that in order for employers to facilitate timely return to work, it's imperative that we have functional capacity information. We do not consider this to be medical information, nor do we consider this to be an invasion of privacy.

Thus, it is our recommendation that the currently worded amendment does not define the functional capacity and should do so, and classify it as non-medical information. Dr Michel Lacerte spoke to that as well yesterday. Furthermore, and this is the other corollary that must be with that, it must be given to the employer in a timely manner, preferably 24 hours.

The following information as it pertains to the notice of fitness ties in with the report of functional capacity information and return to work. It is through the board's current procedures and processes that employers are notified via an initial notice of fitness with regard to whether a worker can or cannot return to work.

The problem with this form is that there's no obligation on the board's part, once the initial notice is sent out to employers, to require that it sends it on a regular basis. That is to say, not all employers, and in particular with the construction industry, can always provide immediate and suitable modified duties, at perhaps what we call the most severe or restricted functional capacity levels, things that would be described as just merely capable of doing daily living activities.

However, employers can and will make the effort to provide suitable modified duties as a worker progresses in his recovery. But in order for employers to take advantage of being able to provide return to work, if not early return to work, we must be notified as the worker progresses so that when he does meet a functional capacity level that we can accommodate with suitable duties, we can then implement an early return-to-work program. Thus the recommendation would be to have the notice of fitness forwarded to employers on a regular basis, perhaps every 45 to 60 days.

The other key component with regard to a return-to-work program is ensuring that there's optimal medical management. It is imperative that there also be an obliga-

tion on the medical profession to provide a medical management program that is based upon effective and efficient evidence-based modalities and treatments, with which we know workers can and do recover.

I'm just going to keep going here.

As pertains to vocational rehabilitation issues, to two points within the amendments under section 53, we can say congratulations to the government. They have recognized the imperative of having the employer consulted and involved. We are happy they say that when a voc rehab program is going to be implemented, the employer should be consulted, because employers can bring a lot of information to bear. One of the anecdotal points I have brought out is that we can query the appropriateness of voc rehab objectives.

Of note, five years ago, one of my first experiences with the voc rehab plan was that a worker had continued to be off work for over a five-year period, despite having a voc rehab plan in place. The objective: return to work to a heavy mechanic duty. The problem with that was that the permanent impairment restrictions stated no heavy lifting and no repetitive bending, key functional demands of the new voc rehab goal. But it took the board and the worker five years to recognize that they had chosen the wrong goal.

Now when I have back claims involving voc rehab, one of the first things I do is look to see what is the chosen retraining or new position program, and point out: "Have you closely examined what are the functional capacities of this job once he's retrained? If not, let's take a second look before we invest the time and energy."

As it pertains with regard to voc rehab services and the qualification for availability over specific periods of time, again, I think it's important that employers be asked to contribute. Is it appropriate to extend services? Of note, we believe this provision—and this is under subsections 53(12) and (13) on page 6 of your notes as I'm going along quickly—is that a worker may continue to be unemployed because he has chosen, in concert with the board, to retrain for a profession in which there are limited employment opportunities in general, and these minimal opportunities are further reduced because the employment opportunities are not located within the worker's home town. Then the question becomes, is it appropriate to expend additional resources in the likelihood that the outcome is near zero? We must think these questions over closely.

I think a key criteria with regard to voc rehab and the whole concept of the audit procedure is the appropriateness of whether the government should be legislating a penalty system of evaluation of employers' programs and practices as it pertains to voc rehab, especially when there are subjective criteria which would not be evaluated by accredited professionals in a uniform manner. Again, as has been previously established, when it comes to accreditation at the voc rehab level, the province of Ontario has negligible programs, and there are subjective criteria for an expert.

Thus, another thing to be considered when one is subject to an audit is, what are the implications of when an employer must now comply with subjective criteria when

it comes to implementation of programs and practices? That is to say, in order to minimize an unfavourable audit, what you're going to start seeing is that employers will be required to transfer resources away from what are already demonstrated to be good health and safety programs and practices because of the decrease in time loss accidents. Instead, we're going to be focussing on such things as vocational training, language training, literacy skills, general skills and upgrading, refresher courses, employment counselling, including job-search skills, identification of employment opportunities. Is that an appropriate way for employers to be reducing time loss accidents and preventing recurrence?

The other question that employers think about when we're looking at the whole concept of audits is, where is the reciprocal agreement for employers in this act? For example, with any time loss claim, will the board initiate a review without an employer's objection to determine why the worker has not returned to work?

When performing this rule, will the board automatically audit any information pertaining to the worker's actions to determine if he or she did or did not cooperate with vocational rehabilitation programs? If found to be in violation, will the board implement a penalty? Will it be retroactive? Will the board establish as part of the criteria of cooperation the selection of a treating health care practitioner whereby the provision of an optimal medical management program would be mandated? If the worker chose to go to a medical practitioner who did not practise along optimal medical guidelines, would that be considered to be a penalty?

Better yet, what about the penalties for the board as it pertains to the lack of cooperative nature with the board? Is there any incentive for the board to make a timely decision and cooperate with employers' requests? Why is all the onus on employers and not on the other stakeholders? That is the question we want to know.

The Vice-Chair: If I may interrupt, you have about five minutes left.

Ms Peters: No worries. I'll give you a full minute to ask questions.

With regard to penalties and audits, and it pertains to re-employment, we feel that section 54 already allows for a sufficient number of penalties to employers, who get penalized both with regard to experience rating as well as not meeting re-employment provisions. We don't need to be penalized on the subjective criteria of programs and policies.

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Additionally, and what is particularly important to construction, is that these penalty scenarios fail to recognize that for small employers the burden of proof and compliance with such audit-based programs lies with producing substantiating written procedures and practices. This requirement would be costly as well as administratively prohibitive. This is especially true in construction in which, for an employee population base of over 300,000, there are approximately 32,000 employers, of which, on average, it is estimated that over 80% have five or less persons.

Furthermore, the entire concept of health and safety practice audits repeats and duplicates the provisions already in Bill 208.

We add to that the final complication that both claims adjudicators and case workers will become workers' advocates, thereby clearly eliminating neutrality. You have a system that has further established barriers to re-employment and reinstatement and which is not, "Knock them down."

Thus, as the conclusion, it is clear from the discussions we have brought up today in the submission paper that it is our position that Bill 165 is based upon false assumptions, thus rendering any recommendations as highly suspect despite the fact that they are not the same recommendations as negotiated by the PLMAC accord.

Additionally, and as employers, we find it rather ironic that we're in a unique situation here. We are now protectors of the workers' compensation system in Ontario for both the current working population as well as the future working population. It is self-evident that without fiscal sustainability there will be no workers' compensation as we know it today. Furthermore, this fact has not been lost on the representatives of our construction labour force.

This is my final comment. Of note, and I would request that you review COCA's submission of August 25, there is a letter in there dated June 21, 1994, co-signed by Mr David Chalmers, chair of COCA, and Mr Joe Duffy, business manager of the Provincial Building and Construction Trades Council of Ontario, and I quote:

"...both parties acknowledge that the unique features of the workers' mobility in construction make it impractical to apply the proposed template to CAD-7. The bill's proposed amendments to subsection 103(1) of the act do not acknowledge this conclusion and impose uniformity in its application. This is not acceptable as we believe it may damage the industry's occupational health and safety performance rather than improve it."

Thus, and for the record, it is clear that this bill does not have the support of the construction industry, both labour and management.

The Vice-Chair: A brief comment from each caucus.

Mr David Winniger (London South): You've made a number of suggestions today that might fall under better case management. But yesterday we heard evidence from several people that the best early return-to-work programs, the most successful modified work programs, were those that were a product of the cooperation of labour and management, the company doctor and in some cases joint committees which were spearheading early return-to-work. I wonder if Ellis-Don has a joint committee dedicated to ensuring that workers who are able to, can return to work early.

Ms Peters: I'm proud to say that well in advance of the legislation, Ellis-Don has implemented and has continued to implement an early return-to-work program. Because we are a multi-union employer, the system works slightly differently than it might work in a workplace where you have what we call a static and captured audience.

Do we work from a joint system? In a sense of the

word it is a management-directed program, but all the program materials and input in the program are merely coordinated by management. That is to say, all the correspondence is copied to the worker, to the doctor, to the board, and it is merely management that takes on the administrative burden of coordinating the return-to-work program. The worker's directly involved.

Mr Mahoney: I wonder how many of your subcontractors would have joint health and safety committees on those programs, the small people who do a lot of the work under the direction of Ellis-Don. I appreciate the fact that you have it as a large corporation, but the smaller companies in this province are just going to get killed with this stuff.

You raise a really interesting point on page 7 of your report where you say, "...is it the casual employer's responsibility for the fact that, upon testing, the" injured "worker does not have more than a grade 6, 8, 10 education" and that they turn out, even though they might have lived here for 20 years, to be functionally illiterate? So it's now your responsibility to get them a high school diploma or to get them a degree of some sort in English and/or math at a cost, we found out recently, of about \$10,000 per course for these students, by the way, being paid for by the Workers' Compensation Board.

What you haven't said here is that workers' compensation, it seems to me, is turning into a broader social program rather than an insurance policy paid for by employers for the benefit of injured workers. Is it the responsibility of an organization like the WCB to re-educate these people or is that indeed the responsibility of the worker and society at large, ie, the government?

Ms Peters: I would temper my response—

Mr Mahoney: Don't bother. Go ahead. Let 'er rip.

Ms Peters: I raise the queries to point out the way the socioeconomic shift of the cost of the safety net has gone to the workers' compensation system.

Mr Mahoney: Right on.

Mrs Witmer: Thank you very much for an excellent presentation, Ms Peters. I think you've raised just some outstanding questions that the government needs to give very serious consideration to. For example, you ask, "What about reciprocal treatment for the employer?" I think throughout the document we see that the employer's going to be penalized, it becomes a much more confrontational system, and also you raise the question, "What are the qualifications of those board personnel who will sit in judgement of employers?" There are just so many unknowns within this legislation that it has to be extremely frightening for employers who are already dealing with a system that's mismanaged. Any further comments?

Ms Peters: I want to stress, and it had been previously brought up, that it's bad enough for a large employer to attempt to understand and to implement the current legislation and be proactive. The small employer, whose average job duration is six weeks, if he is audited he is out of work. Is the purpose of the act to put workers out of work? He'll fail the audit.

The Vice-Chair: Thank you. On behalf of the

committee, I'd like to thank Ellis-Don Construction for its presentation here this morning.

Do we have anybody here from the Canadian Union of Public Employees, Local 255? And I don't believe we have anybody here from the Waterloo Regional Labour Council either.

Interjection: They're doing a heck of a job, Mr Chairman.

GLASS, MOLDERS, POTTERY, PLASTICS
AND ALLIED WORKERS UNION

The Vice-Chair: I believe Mr Rice from the Glass, Molders, Pottery, Plastics and Allied Workers Union, Local 446, has agreed to go. We appreciate this. Good morning and welcome to the committee.

Mr Melvin Rice: Good morning, panel. My name is Melvin Rice, and to my right is Andrew Duffy.

History has clearly shown that because of past governments' interference through political appointments, the mandate of the Workers' Compensation Board has been severely hampered. It is now time that the system be turned over to the two stakeholders most affected: workers and employers. Bipartisanship has been proven to be the most effective and non-controversial method of governance. The best example of such a system is the Workplace Health and Safety Agency. Over 300 decisions have been made by consensus and only once was an issue forced to a vote.

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Statistics show that 78% of injured workers disabled for more than a year, post-Bill 162, are unemployed. This statistic is deplorable and unacceptable, yet it is the propaganda of employers and their endless rhetoric regarding unrealistic projections of the unfunded liability that continue to thwart attempts to remedy the high unemployment of injured workers.

I would like at this time to introduce Andrew (Andy) Duffy from Woodstock, an injured worker from Timberjack Inc, where I'm also an employee. Andy would like to relate to the committee some of his personal experiences regarding the 10 years subsequent to his accident.

Mr Andrew Duffy: Good morning, ladies and gentlemen. I'm Andy Duffy. I was injured at Timberjack. I suffered a back injury in 1985 and I've been off work ever since.

I have done everything that the WCB has asked of me. At first my doctor took me off work and then hospitalized me. After that I went to Downsview for three weeks. The first thing the doctor who was in charge of me said to me was, "What's your problem?" I told him. His reply to me was, "There's nothing wrong with you." So I said, "Have you looked at my X-rays?" He said, "No, if I want to look at X-rays, I'll have them done here." I said, "Why don't you have them done?"

So I had them done and three weeks later, at the end of my course, I was taken to his office and I said to him, "Did you ever look at my X-rays?" He said, "Oh, yes, you have problems with L2-3 and L3-4 in the lower back, but you're fit for modified work." He got in contact with a counsellor, I believe, and the counsellor got in touch

with Timberjack. They took me back to work, just working out of the main office. I believe I lasted there about four weeks and my own doctor again put me off work and I had to see them in emergency.

A week later, it so happened I had to come here to London for an examination at the WCB. The first thing the doctor said to me there was, "Have you been working, Mr Duffy?" I said, "Yes." He said, "Who told you to get back to work?" I said, "One of your counterparts in Toronto." He said, "Well, I'm telling you that you don't work. Go home and I'll have a counsellor contact you."

That was fine. I stayed home. The counsellor got in contact with me and I was sent Goodwill Industries in London for rehab again. After the rehab I was called to the counsellor's office, who told me I was unemployable, 100% unfit for any type of work. I was called up in front of the pensions board, and although I'm 100% disabled I was given a 20% pension, which is inadequate on any terms. So \$200 a month, to me, is going to help me a lot.

I don't know what else I can say, just that I have done everything the WCB has asked. Thank you.

The Acting Chair (Mr Paul Klopp): Thank you, Andy. You did great.

Mr Rice: In my opinion, Bill 165 does address some of the most urgent problems in the WCB system today. From my analysis, Bill 165 is very similar to the agreement that PLMAC negotiated. There certainly seems to have been a lot of give and take on both sides, as is the usual course of negotiations. However, in the drafting of the legislation, the intent of certain amendments has been diluted by the language chosen. I have attached an appendix with suggestions for your consideration.

To summarize the appendix, I am most concerned with the language in subsection 51(2), which refers to prescribed medical information. Access to a worker's medical information must be limited to only the employer who participates in the vocational rehabilitation plan and shows a genuine interest in returning the injured worker to the workforce. The current wording seems to discourage a cooperative environment which is imperative in any successful return-to-work program. Before providing information, a physician should be comfortable that it will be used to rehabilitate and accommodate the worker's impairment, preferably through a joint labour-management return-to-work program. Any medical information provided should be non-diagnostic in nature.

I also have concerns that subsection 8(7.1) eliminates the value of private disability insurance plans that are purchased by workers. This section needs only to identify duplicate worker compensation benefits.

The appendix goes on to identify a few more areas of concern: Will subsections 53(10) and (13) allow interference by an uncooperative employer? Will subsection 95(6) hamper the independence of the Industrial Disease Standards Panel? Can subsection 147(14) be amended to include the group of injured workers who turned 65 before Bill 162 and who will miss out on the \$200 increase? Is the cap in section 148, the Friedland formula, necessary? Our position is, "Hats off—no caps!" Why does the bill not eliminate section 93 so that both the

workers and the employers can enjoy a truly independent appeals tribunal?

In summary, the \$200 increase will be appreciated by the approximately 40,000 injured workers who remain unemployed and on the brink of poverty. Although welcome, it will not make up for all the feelings of despair and indignity that injured workers and their families must suffer due to the inadequacies of the WCB system. Fortunately, these workers will continue to receive 100% inflation protection of their benefits, yet approximately 130,000 other injured workers will watch the Friedland formula slowly erode their inflation protection.

I must state for the record that I do not agree with the implementation of the Friedland formula or any other method of decreasing worker benefits solely for the purpose of increasing the board's financial viability. Surely there are only two proven methods of attaining cost-efficiency and ultimately a healthy compensation system. They are accident prevention and maximum re-employment. I do however accept that the Friedland formula was a result of the negotiated process, but I hope that the royal commission will review this important issue.

I believe that once workplaces become safer and truly enforceable return-to-work programs are mandated by legislation, we will begin to witness a resurgence of the health of the workers' compensation system. It is imperative that the system be administered by a bipartite board representative of the two stakeholders: workers and employers.

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I strongly urge the government to pass Bill 165 into law with the proposed amendments. Together with the findings of the royal commission, this bill will work to rebuild the compensation system so that it will reflect the needs of our society in the future.

Thank you for this opportunity to present my views to the committee.

Mr Mahoney: Just one brief question: On the opening page of your presentation, sir, you say that from your analysis Bill 165 is very similar to the agreement by the Premier's Labour-Management Advisory Council, the one that was negotiated. Just help me with this. The agreement was put in place and part of the agreement was adopting Friedland, which would generate, I believe, \$3.3 billion in revenue for the board. The agreement by the PLMAC, when they left the room, was that the \$3.3 billion would come off the unfunded liability. When it appeared in the announcement by the Premier, ie, Bill 165, the Friedland formula was used to redistribute \$2.5 billion—I think my numbers are pretty close—to other injured workers. So it didn't go to what the agreement was. Okay?

I'm not really asking you to comment on the propriety of doing it one way or the other, but the agreement, when they left the room, was a \$3.3-billion reduction of the unfunded liability. How can you say that this bill reflects that agreement when in fact the government introduced deindexation of pensions, taking money away from

injured workers and redistributing it, which was not the agreement at the PLMAC?

Mr Rice: Mr Mahoney, what I do is I work in a factory 40 hours a week and I don't have lot of time to get into the real thing.

Mr Mahoney: I appreciate that.

Mr Rice: I read what is put out by our leader, Gordon Wilson of the OFL, and the issues that they put out. I certainly believe in what they have to say, so I really can't comment on that. All I know is that we need this bill. It has to go through. The Friedland formula I don't agree with, but it was negotiated. I've been into negotiations with our company, I guess, five times and you never get all that you want. This bill, so far, is the best that I have seen that we need.

Mr Mahoney: That wasn't my question.

Mr Rice: I know, but I really can't answer your question.

Mr Mahoney: It wasn't the agreement; that's my only point. Right or wrong, it wasn't what was agreed to. If it had been agreed to, if they had all shaken hands in those PLMAC meetings and management had said, "Okay, fine, let's give the \$200. Let's use the Friedland to generate the revenue, let's not bother looking internally within the board. Let's do that," then I would agree totally with your statement. I appreciate the fact that your information comes from the Ontario Federation of Labour, which is claiming that this was the agreement. I just point out to you, with due respect to you and to Mr Wilson, that this was not the agreement. Now, Mr Wilson will be here this afternoon; we can ask him to clarify that.

Mr Rice: Okay, I certainly would appreciate it if you would ask him.

Mr Mahoney: I will ask him.

Mrs Witmer: Thank you very much for your presentation, both of you. I want to just follow along the same path that my colleague has embarked upon, because I do believe that some of the information contained within your document is misleading. For example, you indicate that the new system of bipartism has been proven to be the most effective and non-controversial method of governance and then you quote as a good example the Workplace Health and Safety Agency. For your information, I can tell you that agency is not working. I think you could talk to any employer in this province and they could tell you exactly why bipartism does not work.

I think it's important to note that you've indicated here that there are great similarities in the agreement that was reached by the PLMAC and Bill 165. Again, I need to point out to you that the employer community that negotiated the accord has totally rejected Bill 165 because it doesn't in any way, shape or form reflect the accord. What we see in Bill 165 is the labour position. In fact, it's a very political agenda.

I think it's important that everybody take a look at all the information available. Unfortunately, this bill isn't going to resolve the problems that have been talked about as far as the injured workers are concerned. It's not going to make for a more efficient system or more timely delivery of services. That's totally missing from this bill.

Mr Rice: My only response to that is that I work at the bottom line, with the injured workers like Andy here, and I see this all the time. I talk to management. All they ever seem to have is nickel and dimes. They worry about the money. They don't worry about the workers they injured. This is just one example. We have, I guess, four more, if you care to be interested in talking to them, from our own factory in the same position.

Mrs Witmer: As MPPs, we actually deal with injured workers all the time. We face the same frustrations as you do. We try to facilitate their return to work and dealing with the system. I think it's unfair to tar and feather all employers, because we've certainly heard from employers. We all know employers who do an excellent job of doing what they can.

Mr Rice: I've never had the opportunity to deal with those yet. When I do I'll certainly let you know.

Ms Sharon Murdock (Sudbury): Mr Rice and Mr Duffy, I want to thank you very much for coming in. Mr Duffy, I want to particularly thank you because I think you've made the point of what that \$200 is going to mean to the groups that are exempted under the Friedland formula.

It's interesting. I've been listening to the comments and the questions that Bill 165 is the labour side and that the PLMAC agreement was never listened to. If this was the labour side of the bill, there would be no Friedland formula in here at all. If this was the labour side of the bill, there would be unbelievable changes to the return-to-work program and the involvement of the labour movement every step of the way at the Workers' Compensation Board. To make a statement that this doesn't reflect what the agreement was and that this is all a labour bill—you're right in your comments, in saying that it is a compromise and that neither side gets everything it wants.

In terms of the bipartism of the board, I know that you did mention it briefly, but I just wanted to see what kind of representation you thought of in terms of the breakdown. I don't know if you know the details of the breakdown of the board and how you see it working.

Mr Rice: I'm not that far up on it, but I'd like to see equal representation between management and labour and get the thing going and get our injured workers back into the job they came out of.

The Vice-Chair: On behalf of this committee, I'd like to thank the Glass, Molders, Pottery and Plastic Allied Workers Union, Local 446, for its presentation this morning.

I'd like to call forward our next presenter, from the Canadian Union of Public Employees, Local 255.

Mr Ferguson: While they make their way up, I think we all recognize there are some strongly held opinions on all sides concerning this bill, but I would hope that in the future we don't accuse anybody of trying to mislead the committee. I mean, Ms Witmer said the last delegation tried to mislead the committee.

Mrs Witmer: Did I use the word "mislead," Mr Ferguson?

Mr Ferguson: Yes, you did.

The Vice-Chair: I did not hear that word, but I think

it's agreed. I think that with the cooperation of all the committee members, we will get through this.

Mr Mahoney: The only one who wants to mislead anybody around here is you, Will. We know that.

Mrs Witmer: I would agree.

The Vice-Chair: Order.

1030

CANADIAN UNION OF PUBLIC EMPLOYEES,
LOCAL 255

Mr John Adams: My name is John Adams. I am the secretary-treasurer of Local 255 of CUPE. I have been very interested in Bill 165 since I first found out about it in June of this year. If it becomes law, it will most certainly help ease the hardships of many disabled persons in Ontario. There are a few amendments that should be attended to before it is passed. I won't personally discuss the changes—I prefer to leave them to more knowledgeable speakers—but I think after my address you'll find out the things that should be amended.

You see my compensation board claim number before you and a very brief rundown of my experiences in the last almost 30 years. On July 21, 1966, at approximately 9:45 am, I was working aloft on a telephone pole when the pole snapped off and crashed on rocky ground. I had a sharp pointed stone penetrate my right elbow causing a fracture of the radius and I suffered some painful broken ribs. I was given first aid by my fellow worker and then transported, in a great deal of pain, by the way, about 18 miles by a Bell Telephone truck, as was instructed by the supervisor.

At the hospital, they just placed a cast on my arm and nothing on the ribs because they said there was nothing they could do about them really.

From the hospital, I was taken directly to my employer, where I was severely reprimanded for several hours for getting injured and, even though I was in shock, was forced to sign forms to say that it was my own fault. I must say that at this time I was only following my supervisor's orders. Up until 15 minutes prior to the accident, both my fellow worker and myself had followed the book in every safety aspect.

I was not allowed to leave for home before 5 pm at night and I had to use a bus. I was told to report for work at 8 am the following morning so as not to cause a lost-time accident. My employment for the next seven or eight weeks consisted of answering radio calls and sorting files in an office.

In September, I returned to my position as lineman and had to attend the company doctor twice a week for so-called rehabilitation. This was very painful. The doctor's idea of treatment was to put his body weight on my arm, which is in this position permanently, and try to straighten it forcefully. I almost passed out several times. He ridiculed me and called me a wimp. This affected me physically and mentally, and eventually I just discontinued seeing him.

On February 21, 1967, after being stressed right out because of work conditions, I phoned in sick and had a visit from my supervisor who informed me I'd been dismissed from the firm. During the course of the next few

hours, I received about four phone calls offering me situations because of other, more sympathetic supervisors at the company. I opted for the position of learner power lineman for the simple reason that I was a power lineman before I came to Ontario.

I progressed very favourably with the new firm despite the fact I was having increasing difficulty with my right arm, which by now was permanently locked in a bent position. After having a chat with my doctor, it was decided I needed surgery on my right elbow. This was performed around June 1967.

After some 10 weeks off work, I received a bill from the surgeon for the operation that he had performed. It appeared that my former company had not reported my accident. Luckily, I met the nurse from the hospital who remembered placing the cast on my arm a year earlier. Because of my hospital file, I eventually was granted 7% disablement in May 1968.

From 1968 through to 1986, by using modified work practices because I had no rotation of my wrist, I was able to do my job effectively. I've always loved my job—in fact, I have taught this trade at Ontario Hydro school—and lost very little time apart from the usual sicknesses and illnesses. But in 1987 my coordination on my right arm really got bad and the result was that I suffered several broken fingers on my left hand. It was found that the ulnar nerve in my right arm and wrist was operating at only 1% of its potential.

The surgeon at Western University Hospital here in town chose to do an ulnar nerve transposition. He had fully intended to do some other modifications at the same time but, on getting inside and seeing the decayed condition of my elbow, decided to perform only what was necessary and leave it at that. My nerve gradually repaired itself to the present state and eventually I had to have more surgery at Meaford General Hospital, where I had a plastic and steel implant and quite a lot of cleanup was done.

On applying for reassessment by the WCB, I ran into a great deal of opposition—and that's putting it very mildly—and was told constantly that there was absolutely nothing wrong with me. How this information was obtained by the WCB is a mystery to me because I had not been assessed or examined by anyone since 1968. I have letters in my file that refer to a "permanent disability assessment of 1978," which is another mystery because I never went to such a meeting.

I was also informed that I suffered no wage loss because I earned far more in 1989 than I did before my accident in 1966. I earned \$2 an hour in 1966. It's obvious I earned far more. Because of my condition, I was dropped from being a power lineman and I lost pretty close to \$8,000 a year, which is a lot of money. It meant a lot to my pension. I dropped to approximately \$26,000 in 1987; I did not reach \$30,000 again until 1991.

I had to make some inquiries and, with the assistance of the office of the adviser to the injured worker in Toronto, I was eventually called to the 16th floor of the WCB building on October 21, 1991—it was a horrendous experience, I can tell you—where I was told by the examining doctor that I was in incredible condition. His

name is a mystery to me because he never even introduced himself to me. I asked him what was going to happen; he said, "Nothing much."

In the last week of November 1991 I was notified that my claim had been reviewed by a medical staff and that my permanent impairment had been increased to 16%, which is quite a bit from what it originally was in 1966. It brought my WCB pension allowance to \$202.28 per month.

Since August 1991 I've been disabled with a chronic back and leg ailment which adds to my problem because I have to use a walking cane with my gimpy arm; therefore I'm not able to walk very well. I had some pretty heavy-duty spinal work done at Hamilton General Hospital. It repaired the nerve damage, but I still have a lot of pain.

One of the things that I am concerned about has already been discussed by the previous speaker, and it was receiving compensation from two different places. On the back page of my article you'll see that I live like a millionaire. At the end of the month I have \$14.62, which I have had a hole put in today because I had 30 copies, 180 pages, photocopied at 10 cents a copy. I'm in debt to myself.

If it is considered that I am getting awarded by the WCB and Canada pension disablement and I have my \$200 reduced out of my pension, I'm going to be finding really hard times.

In conclusion, please consider the thousands of injured workers, many of whom could be in a far worse financial situation than myself. It is because of these people you should find it in your hearts to make this bill law in Ontario. I thank you for your patience.

1040

Mrs Witmer: Thank you very much for your presentation, Mr Adams. In the course of last week and this week we've certainly heard from many individuals such as yourself who have faced the system and been frustrated by the system. However, my personal assessment of Bill 165, and I know it's an assessment that is shared by many people, is that this particular piece of legislation unfortunately is not going to address some of the very, very serious concerns you have raised today. However, I think we're all committed to doing what we can in the future and hopefully all three parties will work together to make sure that the situation does improve itself for anybody injured on the job.

Mr Adams: I hope so. Thank you.

Mr Randy R. Hope (Chatham-Kent): It's nice that people are sympathetic, but the two opposition totally disagree with the \$200 allowance that will be given per month, and I think it's important for the record to show that.

Mr Adams, one of the things people might be saying is, this accident happened a long time ago.

Mr Adams: Yes.

Mr Hope: With the practices that are in place today, with the experience rating and that, people are not forced back to work, they're not forced on to sickness and accident programs, they're not forced into jobs that you

indicated. With your experience in the labour movement and the people you talk to, especially injured workers, do you see a recurrence of the situation that happened to you in other workers' situations that are happening today?

Mr Adams: I have a friend who works for a steel company in Hamilton who's had an operation for cancer on his throat, he has damaged lungs, a lower back problem, problems with both legs, who has been smoothly pushed back to work in a very bad environment. He was basically threatened, "If you don't go back to work, you will have no WCB," and this is a crime. This man is not in very good condition. Now, if this isn't intimidation, I don't know what is.

Mr Hope: Mr Adams, in your presentation you also indicate mysteries about documentation and information dealing with your medical.

Mr Adams: Yes.

Mr Hope: Do you believe that if medical information was given to current employers—and it's only your belief I'm asking; you know, I only have to ask if you would believe it, because you're a victim of circumstances that happened before in workers' compensation—do you believe that employers would utilize that information, medical information, to discredit current claims or future claims dealing with any benefit program the employer may offer or to make sure re-employment is not an issue in their workplace for you?

Mr Adams: It depends on the employer. I was lucky to have my last employer, who had absolutely nothing to do with my injury. They actually gave me a job as a serviceman and meter reader, and they were definitely not committed to do so. I believe there are a lot of very good employers around who would do such a thing, but there are some employers, as my former employer pointed out, that are pretty devious. I tell you, I'm not impressed with that company.

Mr Hope: You clearly indicated that you live like a millionaire.

Mr Adams: Yes.

Mr Hope: I guess we would question that, but one of the things I would like to ask you is the representation issue. You made reference to the board doctors, you made reference to what happened to you with WCB. Do you believe it is in the best interests of injured workers to have representation on the board of directors to make sure the issues and views of injured workers are heard?

Mr Adams: I would volunteer my body for that job if it is needed, even though it would cause me great pain in travelling. I firmly believe someone should be there to see that there is fair treatment, because I was left on hold for 10 minutes on the phone one day. I was addressed—I realize we're in a bilingual country. One person in Toronto—I will not mention names, but I have it on file—would insist on speaking to me in French. So one day I answered in my first tongue, which happens to be Celtic, and she hung up on me, because she didn't have to put up with this nonsense. If I did that to her, I'd still be waiting to get some money. Really, I was pretty badly treated, and I hope that we do have good representation.

Mr Mahoney: Being on hold for 10 minutes is

probably better than getting voice mail, but I won't go into that.

Mr Adams: Not when you have to pay for it, sir.

Mr Mahoney: I don't have any questions for Mr Adams. I do want to clarify, however, what Mr Hope has just put on the record, and that is that we are opposed to the \$200-a-month supplement. Let me be very clear—and if you want to read my report, you'll see it there—that we support the principle of providing that supplement to the injured workers who need it, but we clearly said that money has to be found from within restructuring of the Workers' Compensation Board and savings in the Workers' Compensation Board and not from Friedland. So let's just be very clear, because Mr Hope and others have a tendency to want to put things in Hansard and then later on say, "See, it happens to be true." It's not true.

Interjections.

Mr Mahoney: Well, read the document. It's absolutely clear.

Mr Ferguson: I didn't see it. Show us.

Mr Mahoney: I'll point it out to you later. But it's there.

That was also part of the accord, by the way. There's no disagreement on the \$200. The disagreement is in where the money comes from, how it's delivered, who gets it and the use of the de-indexing to fund it when that was clearly agreed to in the accord to go towards the unfunded liability.

The Vice-Chair: On behalf of this committee, I'd like to thank the Canadian Union of Public Employees, Local 255, for its presentation this morning.

WATERLOO REGIONAL LABOUR COUNCIL

Mr Larry Batista: Thank you very much. My name is Larry Batista. I'm the president of the Waterloo Regional Labour Council, and on behalf of the Waterloo Regional Labour Council, I thank you for this opportunity to respond to Bill 165, the Ontario government's proposed amendments to the Workers' Compensation Act and the Occupational Health and Safety Act.

The Waterloo Regional Labour Council represents approximately 20,000 members of over 100 affiliated local unions in the region of Waterloo. You will no doubt have heard or will be hearing from some of these locals individually. Further, we also participate in many regional bodies that help our members, including the Waterloo-Wellington Injured Workers Educational Network.

Because of our participation in the community at large, we have had a chance to see the many differing views about what ails the workers' compensation system and the more controversial views on what to do to fix it. The little academic background that I have would love to state that we have unbiased and objective conclusions in this review of Bill 165, but the worker in me knows that is definitely not true. I am pleased to state that the Waterloo Regional Labour Council will always see the world from a rather subjective point of view, and that is the worker's perspective.

Let me state right off the bat that Bill 165 is a package

of compromises that attempts to address some of the more rational employer concerns and some of the more rational worker concerns. It is not the end-all and be-all in WCB legislation. Nevertheless, it does take us much farther along the path to a just and equitable system than most legislation that is being passed in Canada today, so I applaud the Ontario government for introducing this legislation. Unlike the Liberal and Conservative critics, whose unbending and unending attitude gives Neanderthals a bad rap, this government has finally begun to deal with the problems at the WCB in an open and fair and reasoned manner.

Mr Mahoney: Just like this presentation.

Mr Batista: I said it was biased.

Mrs Witmer: And you might as well condemn everybody.

Mr Batista: However, Bill 165 does have some serious flaws that need to be addressed before it receives royal assent.

First, section 8, which amends subsection 51(2) of the act, mandates a doctor to provide return-to-work information, albeit with worker consent, to an employer without first having some kind of determination about whether the employer intends to participate cooperatively with the worker, the doctor and, where applicable, his representatives in the return to work.

Workers are often unaware of employer animosity in return-to-work situations until it's too late. Therefore, any information provided must be used to help the patient's recovery and accommodation through a WCB-approved program. It is absolutely essential that a cooperative environment exist between all parties for successful return-to-work programs to be effective, and this must be made clear in all the legislation.

1050

Further, the Friedland inflation protection formula as proposed in Bill 165 is inflation protection for the board and not for the workers. As you may well know, the 4% cap or maximum increase per year will cause injured workers to lose out badly in the long term, especially if there is a significant rise in the rate of inflation. Inflation protection at 75% of the consumer price index is tolerable to a point, but to put a 4% cap on the yearly benefit is definitely not acceptable. It is not acceptable to us, to the injured workers' groups, to the OFL or to the business community. There is no reason for the 4% cap to be there, so remove it.

Also, the \$200 monthly increase to the lifetime pensions of disabled workers who are unemployed and who were injured prior to 1990 misses a small but completely vulnerable segment of workers. These are injured unemployed workers who are over 70 years of age and missed the increase simply because of their age. This injustice must be remedied.

There is also some fear that this benefit may be clawed back if you end up on social assistance. Language that would affect this kind of legislation is retrogressive, forces those workers in unfortunate circumstances into truly desperate ones and must be removed.

These and a few other flaws that this presentation

cannot go into because of time constraints are all fixable, and from what I've seen, this government seems to be willing to listen. I hope it continues to do so. This government listened by doing a few simple things in the proposed Bill 165.

By strengthening and streamlining the return-to-work and rehabilitation provisions, along with increased penalties for non-cooperation, this bill will help put injured workers back in the mainstream of society and will have a significant impact on the business lobby bugaboo known as the "unfunded liability."

Also, by further enhancing experience rating programs which will measure health and safety practices and return-to-work practices in the workplace, this legislation will finally start to punish the transgressors and reward those with good records. It has always been the fundamental belief in the labour movement that true reform to the WCB can only come from really preventing workplace accidents and preventing exposure to hazardous substances. Reduced injuries equals reduced costs equals reduced unfunded liability.

A bipartite board of directors will also do wonders for the system by ensuring that both stakeholders have an equal say in the administration and policy direction of the board.

Finally, the establishment of a royal commission to study the system will deal with the larger issues which have never really been properly addressed. Issues like coverage, universal disability insurance and the board's relationship to other social programs will finally be dealt with in a serious fashion.

Work is the central part of our lives. It's the place where we spend most of our waking hours and most of our energy. More importantly, the status and rewards society attaches to the jobs that we have or do is rightly or wrongly how we judge ourselves, how we measure our self-worth and the primary way in which others see us. When that ends through a workplace injury that is no fault of our own, our sense of self undergoes a drastic re-evaluation. Actually, it is more properly a drastic devaluation.

Speaking from personal experience, a serious workplace injury literally and figuratively forces us to become injured workers: workers who are valued less by their employer. If you are not fired before the injury is reported, you may be given some meaningless task that has no consideration of your capabilities. We are valued less by our coworkers, who criticize and further devalue the work that we do, and valued less by society, because we are a burden and cannot contribute in a meaningful way. Add to that the sense that you are an abuser of the system if your injury is not a visible one, like a herniated disc, and you have some sense of where an injured worker gets to quickly on the self-esteem chart. We become suspicious of everyone, even those that are trying to help us.

It is time that some legislation allay this paranoia. It is time for legislators in Ontario to put back in some small way the self-esteem that workers have been deprived of as a result of workplace injuries. Bill 165, with the amendments as described in the attached appendix, which was kindly supplied by the OFL, will go a long way in

restoring workers confidence in themselves and in this government.

I thank you for this opportunity to air my council's view on Bill 165 and I look forward to answering any questions you may have.

Mr Fletcher: Thanks, Larry, for the presentation. I'm going to ask the same question I asked earlier about the role of the worker's physician when it comes to getting back to work. One presentation said they should have a committee that can determine whether work is suitable for an injured worker returning to work. I'm just wondering, should the worker's physician also have a role in that, determining whether or not work is suitable for a person returning to work?

Mr Batista: I think it's absolutely essential for the physician to be involved. If the physician is not involved, especially if it's a non-union environment, you may very well have the parties co-opt the worker without his really wanting to be there. So it's essential that someone who knows about the ergonomics of the situation and the actual physical parameters of the job that the worker is undergoing be there to help the worker understand just exactly what they're going through.

The Vice-Chair: Further questions? Mr Mahoney.

Mr Mahoney: To avoid being accused of being a Neanderthal, I'll turn it over to Mr Offer. He has a question.

Mr Steven Offer (Mississauga North): Well, thank you very much. Question: What does "definitely not acceptable" mean?

Mr Batista: That means definitely not acceptable.

Mr Offer: So if the government goes ahead with this bill with the Friedland formula, with the cap, this bill is definitely not acceptable to you and you will oppose it.

Mr Batista: That's absolutely correct.

Interjection: And the OFL.

Mr Offer: And the OFL?

Mr Batista: Actually, there have been circumstances in which we have opposed the OFL position, and that may certainly be the case.

Mr Offer: Okay.

The Vice-Chair: Mr Mahoney.

Mr Mahoney: Mr Chair, you know I couldn't stay out of this. Your statement, "It is not acceptable to us, to injured workers' groups, to the OFL or to the business community."

Mr Batista: That's right.

Mr Mahoney: There seems to be some pretty broad agreement there. Are you aware that the OFL, represented by Gord Wilson, was on the Premier's Labour-Management Advisory Committee, along with the business groups, and that they agreed to Friedland?

Mr Batista: I'm well aware of that. I'm also aware that they've had to make some compromises, and I'm also aware that injured workers' groups are in opposition to that particular formula.

Mr Mahoney: Absolutely. That's clear, that they're in opposition to it. My point, though, that I'm having

some trouble with is that, as Mr Offer has pointed out, you've said that the 4% cap is "definitely not acceptable," which means if it remains in the bill you would urge your friends on the government side to vote against the bill or to withdraw the bill. That's what I determine you to have just said, and you're saying that it's not acceptable to you, to injured workers—I agree—it's not acceptable to the OFL. How can it not be acceptable to the OFL if Gord Wilson himself was part of the agreement at the PLMAC which imposed Friedland? Never mind what they did with the money. It imposed Friedland, including the cap.

Mr Batista: Are you suggesting that Gord Wilson was by himself the only person who had a say in the formulation of this bill?

Mr Mahoney: I didn't say that at all.

Mr Batista: Well, then, what I'm telling you—

Mr Mahoney: I didn't say that at all. You have said in your brief the OFL is opposed to the 4% cap as part of Friedland.

Mr Batista: That's right, and Gord Wilson and the OFL are opposed to that 4% cap. Even though the bill went on to legislation, they still clearly state their opposition to the 4% cap.

Mr Offer: The Waterloo Regional Labour Council is against the bill.

Mr Mahoney: As Mr Offer points out, your labour council is against Bill 165, and we appreciate you coming forward and saying that.

1100

Mrs Witmer: Larry, I'm glad that you do recognize there is compromise within the bill. You indicate that some of the employers' concerns are rational and some of the workers' concerns are rational and this bill is attempting to address that. Personally, I guess, that's refreshing. I've always believed in compromise as opposed to bashing my opponents, and I'm glad that you recognize it. Thank you.

Mr Batista: You're welcome.

Mr Mahoney: Sounds like a Neanderthal to me.

The Vice-Chair: I thank the Waterloo Regional Labour Council for their presentation this morning.

RICK CORIN

JASON MANDLOWITZ

The Vice-Chair: I call our next presenters, M.C. Warren and Associates Inc. Could we could keep the banter down just a touch.

Mr Mahoney: Banter?

The Vice-Chair: The banter.

Good morning and welcome to the committee. You'll be allowed up to 20 minutes for your presentation.

Mr Rick Corin: We wish to thank you, Mr Chairman and members of the standing committee, for the opportunity to speak on Bill 165. My name is Rick Corin. I represent Freightliner of Canada in St Thomas. With me are Ms Thelma Riddell of CAMI Automotive in Ingersoll, Mr Steve Deegan of Cara Operations in London, Ms Kelly Byrnes-Cheong of Sarnia General Hospital and Mr

Ira Downer of Dow Chemical Canada Inc, also in Sarnia. I will make some general comments on Bill 165 and Mr Jason Mandlowitz of M. C. Warren and Associates Inc will then address several specific issues in Bill 165.

Employers support most of the fundamental principles of workers' compensation articulated by Sir William Meredith. We are concerned, however, that the original intent of workers' compensation has been lost in recent years. The current workers' compensation system has broadly defined "accident," created an unnecessarily adversarial environment and expanded costs tremendously. We are concerned that through Bill 165 the WCB will continue to impose a significant financial burden on current and especially on future employers in Ontario and not significantly improve opportunities for injured workers to return to work, obtain modified or suitable work or receive quality rehabilitation services. We are concerned by many of the other changes to the act which are proposed by Bill 165.

We are concerned by the government proposing to allow itself to exact policy direction for one year after proclamation of Bill 165. This violates the Meredith principle of an arm's-length, independent adjudicative and administrative function, and must be deleted.

First and foremost, we strongly oppose any tampering with experience rating. Despite the introduction of an amendment to section 28 of Bill 165, we believe that tampering with the merit system will result in negative consequences. Employers will certainly interpret changes to experience rating to be nothing more than an insidious attempt to gouge additional revenues.

The intent of experience rating is to reduce both the frequency and cost of workplace injuries. Since its introduction in the early 1980s, experience rating has proven to be extremely successful. The result has been that both frequency and duration of lost time have gone down significantly. This trend should be encouraged and allowed to continue by retaining the current experience rating plans. Retaining experience rating unchanged is therefore not a difficult public policy decision.

Reducing the unfunded liability is a much more difficult exercise, one which needed to be addressed but is missing from Bill 165. Most other Canadian jurisdictions are taking bold actions now towards the unfunded liability. Ontario cannot be the outsider at this time. De-indexation of the act would be the type of initiative which would aggressively attack the unfunded liability situation. As a result, we support the application of the Friedland formula to all injured workers.

The workers' compensation system must balance, as Meredith attempted to do, the needs of workers and employers. This requires ensuring fair and adequate compensation for injured workers, dispensed as quickly as possible, and a financially viable system for which employers would be held financially responsible. This can only be accomplished with the inclusion of the PLMAC's financial responsibility framework in the purpose clause to Bill 165.

We submit that Bill 165 has two fundamental failings. It fails to make any significant contribution to the existing act. It is poorly written, poorly defined and unaccept-

ably vague in its intent. Further, it fails to provide a sound bridge between the universally recognized short-coming of the existing system and a new direction which has stakeholder support.

Bill 165 will succeed in compromising the work of the royal commission and imposing significant new administration burdens on the WCB.

I will now turn the presentation over to Mr Mandlowitz.

Mr Jason Mandlowitz: In the time remaining, I intend to address the purpose clause, disclosure of medical information pertaining to return to work, and governance.

We first want to acknowledge the over 60 companies who have contributed to and supported this submission and point out that a number of them are with us in the room today, not just at the table but behind me as well.

As Mr Corin has already indicated, we support many of the perspectives already put to this committee by the employer community. We support in the strongest possible terms maintaining the current experience rating programs now in place in Ontario. They have proven to be successful vehicles for employers to control costs through effective return to work. The efficacy of these programs has been confirmed by a variety of WCB studies, internal and external.

We support the application of the Friedland formula universally. We support deleting from Bill 165 any reference to government policy directions to an arm's-length, independent agency. We are concerned with the continued growth of the unfunded liability, which will directly increase annual assessment rates for current and future employers.

In 1994, based on the average assessment rate for schedule 1 employers, the unfunded liability was about 27.8% of the target assessment rate. The 1994 target rate was set by the board at \$3.20. Without the unfunded liability levy at all, it would have been \$2.31. Since 1990, assessment rates have experienced a net reduction in new claims costs and a spiralling increase in charges for the unfunded liability. The implications are obvious, both to current employers and to those seeking to establish new enterprises in the province. If these costs are unduly burdensome to future employers, then the WCB is technically in violation of section 116(1) of the act.

The government has indicated that the combination of Bill 165, addressing short-term issues, and the royal commission, addressing longer-term issues, represents an important step forward for future reform of the workers' compensation system in Ontario. Bill 165 should not be regarded as a quick fix. It is neither quick nor a fix. Bill 165 fails to articulate either a comprehensive set of principles or a clear vision for reform of workers' compensation.

It is difficult to understand the thinking of the government on a number of issues, including the need for a one-year policy direction authority. If the government had published a background document to Bill 165 which explained its intent, stakeholders would have been greatly assisted in their efforts to present to this committee.

Bill 165 will actually complicate the process of reforming workers' compensation. The royal commission will be reviewing a moving target, changing as a result of the work of the WCB transition team and implementation of Bill 165, should it be enacted. The implementation of Bill 165 should be a matter of great concern to this committee.

If the government and this committee enact Bill 165, you will be dumping on to the WCB, an agency already having difficulty administering the current act, a new and ill-timed challenge. The impact of having to implement Bill 165 now will add new costs to the system, require internal human resource reallocations and reduce service providers for injured workers and employers.

You must understand that your work is only the tip of the iceberg. While you deal at the level of broad legal and adjudicative concepts, these must be given life and meaning by the WCB administration. The WCB must first understand what the Legislature intended in these changes and then consult and communicate with stakeholders, draft new internal policies, obtain approval from the board of directors, train adjudicators, amend all operational policy manuals and so on. Implementation of your recommendations to the Legislature will require a substantial length of time. Implementation of the proposed experience rating plan alone could easily commence no earlier than 1997.

You will not be fixing the system overnight. Changes to the workers' compensation system take time. Only recently has the WCB begun to effectively address the case backlog for determining non-economic loss awards provided in Bill 162 some four years ago. It took the board virtually nine years to complete a new form 7 and form 6. How long would it take the board to consult and complete a new release of medical information form for return to work?

In 1989, the WCB indicated it would initiate a new revenue strategy, including employer reclassification, and some of that has already been done. But the entire strategy was initially cited as being completed in 1993. That schedule has already been amended to 1995. Even that date is now in question. We ask you to consider very carefully whether in fact the WCB can at this time undertake the type and extent of implementation which would be required of it by Bill 165.

For these reasons, we believe that Bill 165 is ill-timed and should be stayed until the royal commission has completed its work and provided a report to the government of the day. We are quite prepared to work with the current act until the work of the royal commission has been completed.

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With respect to Bill 165 itself, we wish to briefly address several issues.

We submit that the purpose clause in Bill 165 is inadequate and must reflect the true purpose and object of workers' compensation legislation while remaining true to the principles established by Meredith. No one doubts that the act is a benefits document, but great attention is also devoted to funding issues. Accordingly, we believe

the financial responsibility framework agreed to by PLMAC should be added to the purpose clause. This would not be unprecedented. Page 12 of our submission provides the full text of the purpose clause enacted in 1993 by the Legislature in the Yukon. It addresses issues of fair and adequate compensation, rehabilitation, the solvency of the compensation fund, fair employer assessments and even other issues.

Appearing before the committee on August 22, the deputy minister indicated that a purpose clause had to answer the question, "Why do we have this legislation?" We submit that the answer to this question rests from the historical perspective with Meredith and from a modern perspective with fiscal responsibility. Obviously, legislators in the Yukon were persuaded by this argument and we believe it will become the wave of the future for all WCBs across the country.

Medical information: We are concerned that the proposed subsection 51(2) of Bill 165 will impede immediate and successful return to work. Bill 165 limits the disclosure of medical information to physicians only, yet the current section 51 in the act allows for medical reports to be submitted to the WCB by a broader set of health care providers. We recommend that the committee review this matter carefully.

To expedite timely return to work, we recommend that subsection 51(2) be amended so that medical information for return to work would be non-diagnostic, focus exclusively on worker capabilities, be reported on a standard form following stakeholder consultation, and be required as a matter of law without the need for worker consent. The success of return-to-work programs rests with the workplace parties who can act in good faith. This approach is working successfully today in many Ontario workplaces.

Governance: Bill 165 requires some clarification on the issue of the board of directors. A reading of the proposed subsection 56(1) allows for the WCB chair to also be a director on the board of directors. We believe Bill 165 intends the chair to be a separate member of the board of directors. This can be corrected by adding the word "and" after the proposed paragraph 56(1)4 of Bill 165. Further, Bill 165 provides no indication of what the role of the chair would be. We recommend that Bill 165 add a section detailing the duties of the chair, which would reflect PLMAC discussions.

To ensure that the WCB administration is represented at the board of directors for the purpose of providing insight on implementation and policy issues and to chronicle board of director decisions to ensure accurate and timely responses by the WCB administration, we recommend that the president be added as a non-voting member of the board of directors. Statutory language from Manitoba, Alberta and British Columbia which already does this is provided for your consideration in our submission.

Finally, we recommend that Bill 165 establish that board of directors' meetings require a quorum of seven voting members, with at least one from each of the stakeholder communities.

Duties of the board of directors: Bill 165 and the act use the term "board" on a number of occasions. Section

D.5 of our submission indicates why this is a problem and recommends the committee specify during clause-by-clause review that "board" should refer to WCB administration, while "board of directors" should be substituted to refer to and mean the corporate entity.

Ontario is one of three jurisdictions which fail to define "board" in the definitions section of the act. Manitoba defines "board" and "board of directors," and we submit that this committee should support the Manitoba model for Ontario. This may not appear to be a significant issue when compared to pension enhancements and the Friedland formula, but Bill 165 is unclear in many instances, leading to confusion as to whether the use of the term is intended to refer to the administration or the board of directors. To ensure proper accountability, this issue must be completely clarified. For example, is it the administration or the board of directors who will be charged with the responsibility for ensuring that medical and scientific advances are incorporated in policies and benefits? Which body is intended to have the authority to receive medical reports? Which body is intended to have final say respecting interpretation of the act? Bill 165 refers to all of these by using the term "board."

We are also aware that this has been an issue of some concern to staff at the Ministry of Labour and recommend it be addressed during clause-by-clause review.

Thank you for the opportunity to present our views to you today on Bill 165.

The Vice-Chair: Thank you. Just over a minute each. Mr Mahoney.

Mr Mahoney: Do you want to ask that?

The Vice-Chair: Mr Offer.

Mr Mahoney: It's okay. With only a minute, we had a couple of things. We wanted to discuss the quorum requirements that you're suggesting, because the change in the act goes from requiring a majority to requiring seven. The way it's laid out, you could in essence have seven labour representatives making a decision without a management rep there, the way that you can interpret this. I don't know that your amendment goes far enough to ensure that this could be protected, because you could have six and one under your amendment, counting WCAT etc, etc. So that's one concern.

I'm very interested in your medical analogy, however, and we heard this from a lot of labour groups. I think you've come up with wording that makes sense, that it would be non-diagnostic, focused exclusively on the worker capabilities reported on a standard form following all-stakeholder consultation. That would in essence "demedicalize," the term that was used yesterday, this whole process, and should satisfy the concerns of anyone around rights to privacy and that type of thing. So I commend you on that.

I don't know if you have any comments in relationship to either of those two issues: the quorum or any additional remarks on the medical aspects.

Mr Mandlowitz: The principle we're trying to establish in the quorum obviously is that a majority is required. As we added it up, there were 13 members and seven as a majority. What I think we've said in our

submission is that if you have three different stakeholder groups—employers, labour, and the public, whoever they may be—you'd have a total of seven, with no less than one from each of those.

Mr Mahoney: Yes, which could be four threes.

Mrs Witmer: Thank you very much for an excellent presentation. I think you've hit the nail right on the nose when you say on page 2 that this bill fails to articulate either a comprehensive set of principles or a clear vision for reform of workers' compensation, and I know that's the concern that many people do have.

You also express your concerns about the fact that maybe we're putting the cart before the horse: We're dealing with Bill 165 first, which is a quick fix, and then we're going to focus on the royal commission. Do you want to expand on that further?

Mr Mandlowitz: It's very confusing, I think, to have two processes which may be very parallel in practice in operation. When one reads Bill 165 initially and one does not have regard from a practical perspective of the implementation implications and one is naïve and knows nothing about the process, then the criticism may be unaccepted. But the reality is we all know that it takes years and years to implement any individual change to the act. Bill 162 is an example of that.

It's our view that we can't have change at the same time as a royal commission is reviewing the system in its essence. We can't be tampering with some of the essence of funding through de-indexation at the same time the royal commission is trying to put that in a broader context, looking not one or two years down the road but a number of years down the road.

Ms Murdock: Thank you very much. After listening to presentations for a week and two days I thought—you know, after a while there's some repetition, shall we say. I didn't really think that I would hear something new, so I'm really glad that I have in this one, and it's on your governance section, on paragraph 56(1)4. From that, in your first paragraph, am I understanding you to mean that you consider this person could be one of the people who are already from either management or labour side?

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Mr Mandlowitz: I'm suggesting that's a possible way one would read subsection 56(1) in Bill 165. It lists five members of the board but it doesn't indicate clearly that it's inclusionary. What we're suggesting is, by putting "and" in after "two vice-chairs," it would be very clear because you're adding, in addition, a chair.

Ms Murdock: "The board shall be governed by a board of directors composed of the following members."

Mr Mandlowitz: Yes.

Ms Murdock: 1, 2, 3, 4—

Mr Mandlowitz: And 5.

Ms Murdock: —and 5, each of them being separate.

Mr Mandlowitz: That's right. I think it's everyone's intent that they will all be separate. I'm suggesting that's not the way I read this with a particular hat on. I think we all have the same goal. I'm suggesting the "and" would clarify it.

The Vice-Chair: I'd like to thank M.C. Warren and Associates Inc for its presentation this morning.

CHATHAM AND DISTRICT LABOUR COUNCIL

Mr Aaron De Meester: My name is Aaron De Meester, president of the Chatham and District Labour Council. I want to thank the committee for allowing me this opportunity to speak today.

This is going to be a brief submission because I do not think it necessary to reiterate from my colleagues of other labour organizations and unions. They no doubt will do a thorough and commendable job of informing you of labour's concerns with Bill 165. However, I will present to you my concerns in order of descending importance.

Starting with subsection 148(1): I strenuously object to using the Friedland formula to index pensions, for obvious reasons. It defeats significantly the principle of protection and economic fairness for 134,000 injured workers. At 4% inflation, the formula will only protect half of their pension. If inflation exceeds 8%, the indexing will protect less than half that figure. Take an example of a young worker injured at the age of 20, collecting a pension for 45 years, until future earnings loss payments cease at age 65. At even 4% inflation, that worker will realize an erosion of 60% in the final years of entitlement.

Section 43: I am indignant that there is no proposal to restrict the practice of deeming. These phantom jobs are invented, then are used to reduce through deduction future earnings loss pension calculation. A great injustice is perpetuated by this miserly and unfair practice. This section should be amended to exclude the practice of deeming.

Section 51: I am opposed to this proposal, which would give to the employer knowledge of intimate details of workers' health. Workers should have the right to privacy. While the phrase "with the consent of the worker" would appear to protect workers, it in fact provides little comfort. Workers, especially in a non-union workplace, are often intimidated by management. If a worker withholds consent, will he or she be accused of not cooperating? This proposal comes from the employers who seek to frustrate workers' claims and interfere with, not help, vocational rehabilitation. I strongly advise that the proposed amendment to section 51 be deleted.

Section 53, dealing with rehabilitation: This section has been amended to provide board assistance to employers with vocational rehabilitation. Employers have obligations under section 54 to assist injured workers. The board's role is to insist that they fulfil their obligations. Injured workers need rights to vocational rehabilitation, not employers. I oppose the addition of the word "employer" to subsections (1), (3) and (9). These proposals should be deleted.

Also, in subsection (12) the wording has been changed from "shall" assist the worker to search for employment for a period of up to six months to "may" assist. I recommend that the present wording be retained. It is next to impossible for injured workers to find employment. The North American free trade agreement and

permanent plant closures have contributed to job loss for many Ontarians, especially in higher-hazard industries where many injured workers are no longer able to work. What is an injured worker to do if his plant closes? Under the present act, the board has an obligation to assist for six months. The proposal would make future assistance optional.

Dealing with subsection 132(2) on the question of unfunded liability: If the board's fund has sufficient moneys in it to pay for all future pension obligations, it is said to be fully funded. If it has more than enough money to pay these obligations it is said to have a surplus. If it has less money than it needs to pay these obligations it is said to have an unfunded liability.

What does this mean? Is the unfunded liability a problem? I submit it is not. If the Ontario economy were to completely collapse tomorrow and the board were to receive absolutely no income in future years, the unfunded liability would be a problem. All pension moneys would have to be paid out and there would not be enough money to pay for them. But this is not of course the case. Ontario businesses will remain open and will continue to pay assessments.

Is the magnitude of the unfunded liability a problem? An unfunded liability of some \$11 billion seems like a lot of money, and of course it is, but the board has capitalized reserves of \$6 billion. This is a lot of money in the bank. I'm just going to change my numbers now, and I'd like to use the figure of \$100,000 rather than \$110,000 and \$37,000 instead of \$60,000. There's a typing error here, I believe. To make a comparison, if you had a mortgage on your house and you had \$37,000 in the bank and a steady income, you would not be overly concerned about your future ability to make your mortgage payment, would you?

I believe the employers are using the unfunded liability in the same way they use the federal deficit: as a way to frighten people into thinking that social programs must be forfeited. The cause of the federal deficit is the same as the cause of the unfunded liability. In the past, corporations have not paid their fair share of taxation, so the federal deficit has increased. The same is true for the unfunded liability. Corporations have not paid sufficient assessments in the past to cover future obligations.

Are the employers who are complaining loud and long about the current unfunded liability proposing to pay more money into the board's fund to ensure full funding? No, they are not. Rather, they seek to cut pensions and other entitlements through the Friedland formula, which erodes indexing.

On the subject of occupational diseases, the reality is that employers at present are not paying for much of the cost of the workers' compensation system because they only pay a tiny fraction of the actual numbers of occupational disease. Because of long periods between being exposed to harm in the workplace and the time people actually get sick from occupational disease, lack of knowledge of the hazards of chemicals and the fact that many diseases have a variety of causes, both workplace and non-workplace, few WCB claims are successful for occupational disease.

Enormous effort on the part of workers and their representatives only increases those numbers by a small amount. Since claims are not established, employers do not pay for them. I believe the only way employers will be compelled to pay the cost of occupational disease will be if its costs are assessed to industry on a statistical basis. For example, if the universal disability plan agency decided that, say, 5% of all cancers were work-related, then 5% of the costs of all victims of cancers would be assessed on industry.

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I'd like to conclude by offering for your contemplation an actual case involving an auto worker in Chatham. As I told you earlier, that's where I'm from. In 1991, Jim Hackett, aged 44, was working in a section of the factory which produces crash sensors to control air bags. One day he fainted and was taken outdoors in an effort to regain consciousness. The plant nurse and the plant manager were alerted and attended the incident, at which time the manager admonished the nurse to report that the incident was not work-related. Jim went off work and his condition of dizziness and weakness continued. Jim eventually was sent to a pulmonary specialist at St Joseph's Hospital in London, Dr Tom Woods. Dr Woods's diagnosis revealed that Jim was suffering the effects of isocyanate poisoning.

Jim submitted a claim to the WCB after learning of his condition. The employer denied that there was any isocyanate in the workplace, and after a WCB investigation, the board also denied the claim. Jim, knowing full well that isocyanates were used extensively in the production process, challenged the company's statement. He met with the company nurse who then admitted verbally that yes, isocyanates were used and suggested he undergo a controlled test exposing him to isocyanates in a lab in London. He was told by the specialist that if he underwent this test it could kill him. He then talked to the company nurse again about the test and she admitted jokingly that was a possibility.

Jim appealed the board's decision because of the evidence of uncontrolled isocyanates was so overwhelming. Today Jim's case is still being denied. That's my submission, ladies and gentlemen.

The Acting Chair: Ms Witmer, you're first.

Mrs Witmer: No questions.

The Acting Chair: Thank you. Mr Hope, please.

Mr Hope: Good to see you, Aaron. Thanks for coming before the committee from Chatham. I believe it's important that you brought up the issue of isocyanates. I know we also have an issue of sick building syndrome that's out there with the federal workers who are a part of it.

Aaron, one of the problems in our community is the issue we were talking about, experience rating, and the issue of workers being put on S and A programs or being put on modified or light-duty programs in the workplaces, which help the so-called safety records in our workplaces, and how they pit worker against worker. Have you ever seen these issues in your own workplace or even throughout the labour council, where safety records are being

pushed on to employees which pit employee against employee to make sure that somebody doesn't take a sick day off or go on workers' compensation?

Mr De Meester: Yes, Randy, that's very prevalent in Chatham. My personal experience is at Siemens Automotive, where I work. They have an ongoing program there where if there are a million man-hours of time accumulated without an accident, without a lost-time accident, they will award some cash or award some trips or something of this nature. Of course, what this serves to do is to somewhat intimidate workers from taking any time off or putting a claim in to WCB for some injury or some chemical hazard that has resulted in disease. If that does happen, they are definitely encouraged, rather than go on WCB, to go on S and A or "We'll give you a job out in the warehouse" or something like that, whereas in fact they should be on WCB because it's definitely work related.

Mr Hope: Some of your conversations in the community—and I know in our community we're much closer to supervisors and foremen in our work areas. Through the experience rating program, are supervisors, to the best of your ability and best of your knowledge, being governed on their pay increments, on their work-related accidents in their areas? For instance, if there's an accident, there are demerit points taken away from them as a supervisor, which then doesn't allow them for pay increases that are there in their areas or in their workplaces.

Mr De Meester: I'm not aware of that type of incentive at Siemens, but I certainly have heard about it at other places of work.

Mr Mahoney: I take it from this—although I can't find the words to say it, so I'll have to ask you. I take it from what you've said here that the Chatham District Labour Council and you personally are opposed to Bill 165 in its current form.

Mr De Meester: To answer your question, I think Bill 165 represents the best piece of legislation we've seen yet on workers' compensation. However, we do believe there are areas that can be improved. We certainly are not rejecting it in its entirety. What I am seeking to do here today is to specifically point out where I think there is room for improvement. It is overall certainly in the right direction.

Mr Mahoney: I just am having some trouble. Your pages aren't numbered, so I'm not sure what page it is, but where you make the reference, "Are the employers who are complaining loud and long about the current unfunded liability," etc etc, "willing to pay more money?" It's the identical wording in the document on Local 446, which we heard earlier this morning, wherein they support eight of the sections of the bill; they're opposed to 17 out of 25 substantive sections, yet they still support the bill.

What I'm having some difficulty—when I compare your document with theirs, when I read you saying, "I strenuously object to using the Friedland formula"—"I am indignant that there is no" proposal regarding "deeming"—"I am opposed to the proposal" on the medical information—you're very clear here that you are opposed

to these sections of the bill. The bill does not go far enough in your estimation, it goes too far in other ways. It's not the employers, to correct your statement, who seek to cut pension and other entitlements through the Friedland formula, which erodes indexing, it's this bill; it's this government that's doing that.

I just don't know how you can say you support the bill. I can see that you would agree with some parts of it; I have no difficulty with that. But how can you support the bill when it fundamentally goes against everything you've said in your document?

Mr De Meester: I disagree with your statement when you say it fundamentally goes against it. That's not the case at all. I appreciate you telling me that I've been very clear and I used the words "strenuously" and "I am indignant." Yes, I am, at the way—

Mr Mahoney: But not indignant enough to oppose the bill.

Mr De Meester: No, no.

Mr Mahoney: Just mildly indignant.

Mr De Meester: Let me finish, please. I thought I made myself clear. I oppose parts of the bill and hope that those parts would be improved, but I will say again that this bill represents the best piece of legislation I've seen so far, from any government, in an attempt to strike a compromise between business and labour. These are our concerns.

The Acting Chair: Thank you, Mr De Meester.

Mr Mahoney: So you're not really indignant.

The Acting Chair: Thank you very much for coming down today, the Chatham and District Labour Council, and presenting the views of your council. The committee thanks you for your time and I'm sure you'll be following our deliberations as they go on.

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ACCURIDE CANADA INC

Mr George Dendias: My name is George Dendias. I'm the human resources manager for Accuride Canada Inc. I'll give you a brief description of the organization. We're the only manufacturer of steel truck wheels in Canada. We are located in a plant which measures approximately 500,000 square feet in the southeast end of London, and we're considered to be the world's largest manufacturer of steel truck wheels. We employ approximately 900 folks and we've been part of the London community since the late 1800s in one form or another.

Let me say at the outset that we accept the notion that reforming workers' compensation is neither going to be easy nor lack its moments of controversy. I think being part of some of these presentations here, from an audience perspective, I've heard some of that. Therefore, if you accept the obvious that whatever the reforms, you'll be faced with a difficult task and attract a large number of critics, I suspect that what you should wish to do is concentrate on doing the right thing, I guess I should say, as opposed to the popular thing.

We congratulate the government on its intentions to fix the workers' compensation problem, that is, offer Ontario a well-managed and self-financed system which quickly

compensates and rehabilitates employees for work-related injuries. However noble the intentions of the government, these amendments and the acrimonious process which brings us here today add more confusion, not less; encourage more partisanship, not less; and create a significantly larger deficit and put into question the reliability of the system for employees and employers.

The current system with the amendments this government wishes to enact are so cumbersome that I challenge you to find an average employee or employer who even understands how workers' compensation works. So-called experts and consultants are springing up everywhere to help the layperson cope with rules, regulations and practices of the board. The service infrastructure is an indication to us that the board is fat on procedures and short on results. Its hallways, in our view, are clogged with bureaucratic cholesterol.

The government's amendments should seriously consider making this process simpler and removing as much of the additional costs which the current complex structure absorbs. We urge the committee to recommend making the system simple so that it becomes easier to administer and more cost-effective. I'm going to be talking about some numbers here which may differ from some others. I think it's important to say that if the numbers are off a little bit from what others have spoken to, it's to the philosophical issue that I want to, I guess, make some significant comments.

The current Workers' Compensation Board deficit is approximately \$11 billion. The government's own projections on the deficit of the Workers' Compensation Board is that it will reach approximately \$13 billion with some of these amendments in place in the year 2014.

The government is also proud of the fact that its reforms will save \$18 billion. I'm delighted that this branch of government is not given charge of the mathematics curriculum for my kids in school. I'd like you to ask the minister on my behalf how it is that you can start with \$11 billion, save \$18 billion, and end up with \$13 billion. Perhaps the math they teach in the school of politics is different than what we're encouraging our kids to learn in school.

The point is that these amendments will add another \$2 billion to an already burdensome deficit. Who will pay when the system no longer can? It is unfair for any government to burden a future generation of employees and employers with this kind of unforgiving dilemma. A bankrupt system will treat both its clients, the employees who receive the benefits, and its shareholders, the employees who make the contributions, callously.

Let me make a brief comment on the bipartite composition of the board's directors. Clearly, this type of structure reinforces the unfounded notion that workers and employers of Ontario want to be governed by a group of advocates. Just as a citizen would prefer to be governed by a government without connections to special interest groups, so must the board's directors be chosen for their impartiality.

Let me now rhetorically turn to these amendments and find the portion which speaks to the responsibility for ensuring that business does not go out of business

financing the WCB. We say "rhetorically" because this portion does not exist in any profound or directive fashion.

The main source of revenue for the Workers' Compensation Board is employer funding. What if enough employers can't pay? These amendments must more directly and ardently speak to the board's responsibility of ensuring that its backers, the employer community, can continue to fund the system while still remaining competitive. It will be too late if the board acts to keep the system viable after business becomes non-competitive. The board should be mandated to protect the employers' competitive ability to fund the system.

Our presentation to this point has asked you to consider the intent and practice associated with the amendments and current procedures of the board. However, in our view, everything else pales in comparison when you review the government's changes to the issues of re-employment and experience rating.

What the heck is the matter with an experience-based format where, as an employer, you pay according to how much you've improved your safety record and reduced your workers' compensation costs? The amendments will allow the board to intervene and create an uncertainty in a process which is simple, direct and successful. As a prudent employer in London, we strive for certainty of costs. Short of having certainty of costs, we want to be able to influence costs so they can become more certain. The amendments will create an air of uncertainty which may not have any bearing on our ability to be a safe employer. Why is this necessary or even desirable?

Have you ever started watching a sporting event in the middle and you didn't know who was ahead? The first question you ask yourself is, "What is the score?" People want to know where they stand. The amendments on the current experience-based system will make the score inconsequential.

When is an employer free to terminate the employment of someone who has been injured and returned to work? The answer: when he quits. Decisions on re-employment end employment continuance smack of subjective ineffectiveness. If the rules on this issue are going to be draconian, at least make them clear and specific. We suggest that the rules be changed to ensure that employees are not disadvantaged because of work-related illness or injury. However, if an employee's continued employment is not related to his injury or illness, an employer should be free to terminate the employment according to the same labour laws which prevail for all other employees. The current practices associated with this issue and the increased powers that the amendments will give the Workers' Compensation Board will encourage employers to jump from the frying-pan directly into the fire.

When I began this presentation, I stated that the government's intentions on changing the current workers' compensation system is laudable. The government should be encouraged to continue its efforts to find a balanced solution to our current workers' compensation crisis. We suggest it's still possible, in this day of political opportunism and 15-second sound bites, for us to develop practical solutions with the good intentions this govern-

ment has initiated. Once again, on behalf of Accuride Canada Inc, we thank you for the opportunity to speak with you today. I hope our presentation suggests that your work is not complete and that you'll give some consideration to our recommendations.

Mr Ferguson: Thank you very much, sir, for your presentation this morning. We certainly appreciate your comments where you laud the government for trying to implement some progressive changes for the board.

I do want to correct—and I'm sure this is not intentional on your part—on the second page where you got into the mathematical calculation. Today, the debt is around \$11 billion, and it's projected that by the year 2014, if nothing is done at this point in time, the debt will increase to \$31 billion. Hence, you get the \$18-billion figure. You used the incorrect figures here—it's not \$13 billion; in fact it should be \$31 billion—where you so freely criticize the Minister of Labour. However, I would take it at face value that it wasn't intentional and that it was an error on your part.

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Can I ask you, is your firm in favour of reducing the level of benefits immediately for injured workers? Some companies have appeared before this committee and have suggested that injured workers shouldn't be getting 90% of net pay for benefits, they should be getting somewhere around 85% or 80%. I'd like to know what your firm's position is on that matter.

Mr Dendias: I think it requires more thought than I'm able to give it at this moment, but I think our position should be that employers and employees should be encouraged to return the injured or ill employee back to work. I don't know if 90% does that for the employee. I suspect that it requires a lot more study and perhaps discussions with other folks, but I think the system should encourage people to return back to work as quickly as possible.

Mr Offer: Thank you for your presentation. I want to talk to you about the last page of your presentation where you speak to the changes of the rating system. You asked the question, I think you said, "What the heck is the matter with an experience-based format wherein as an employer you pay according to how much you have improved your safety record and reduced your WC costs?" I think that is a very important question and I think that we're going to explore that a little bit in greater detail as we go on with the bill. What do the changes as proposed by the government mean to a company such as yours?

Mr Dendias: I suppose if you followed my discussion through to the point of knowing what the score is, I think most of us can deal with events if we appreciate that if we do something, something else will occur. When that becomes very ambiguous, when it becomes cloudy, I think that inability to focus on results as a result of current practices causes us to veer, I suppose, from doing the right things.

In circumstances where you could be a very good employer from the perspective of ensuring that you run a very safe operation and then still be penalized as a

result of some other event that you can't control, I think that will cause turmoil. It certainly does on a specific day-by-day basis. I suspect that on this type of basis it will even cause greater turmoil.

Mr Offer: And on the experience and merit rating as suggested by the government, there's a clause (d) which says "such other matters as the board considers appropriate." I guess that's about as muddy and fuzzy and murky an area as you'd ever want to get into.

Mr Dendias: Again, business is interested in knowing where it stands. Anything that causes us not to know how what we do today is going to affect the bottom line, how the employees are going to be brought to work, causes us to act in ways that perhaps we wouldn't want to act. Let us know if we do A that B will occur, and we'll do A very well. If we don't know that B is going to occur, if we don't know what it is that is likely to be the outcome of our efforts, it's unlikely that those efforts are going to be focused on the right thing.

Mr Offer: So let us ask the government, what does (d) mean? What does it mean? A lot of employers ask, "What does clause (d) mean?"

The Vice-Chair: Any further questions, Mr Offer?

Mr Offer: What does clause (d) mean?

Interjection: Who are you asking?

Mr Offer: The government. I want to know what it means.

Mr Dendias: I don't know. I guess that's why you're asking the question, because no one knows.

The Vice-Chair: Mrs Witmer.

Mrs Witmer: Thank you very much for your presentation.

Interjections.

The Vice-Chair: Order, please, in fairness to our presenter. Mrs Witmer.

Mrs Witmer: I personally have been very pleased with the calibre of the presentations today and yesterday. We've certainly heard some different points of view and yet reinforcement of points of view that we heard last week in Toronto.

I think that you have made an interesting comment on the first page of your presentation, one that we haven't really discussed within the committee, but that is, we have a system at the present time which is extremely complex. It's not well managed, and unfortunately the average employer or employee doesn't understand how the system works. They have been forced into a situation where they're working with consultants in order to understand the system, in order to deal with the system, and as I've said many times, many of the employees, the injured workers, also use the MPP offices.

I guess the number one concern that we need to address is, how do you implement, put in place, in the province of Ontario a well-managed workers' compensation system that will quickly deal with the injured worker and rehabilitate that individual? What does this bill do to create further obstacles to a quick return to work and dealing with the issue?

Mr Dendias: I'm not sure that we have the time to go

into specifics, but I'll tell you—

Mrs Witmer: Just some of the keys. What are some of the keys?

Mr Dendias: Part of what I just said a moment ago: Making the system so confusing that an employer or employee does not know what the outcome of their activities is going to result in causes them to go running, wallets I guess turned inside out, to lawyers, MPPs—I'm not suggesting you get money—consultants and others and basically putting the workers' compensation into their more capable hands.

I can tell you, and I take this from personal experience as an employer and employee and also from speaking to many employees on our shop floors, there aren't many people who understand what happens to their claim once they have an injury. They do not know what to do. They do not know who does what it is that they do with it and they turn to experts, either in a unionized facility to an expert who sits on a committee, or we've had employees turn to lawyers. We've gone directly from an employee-employer relationship to a lawyer-to-lawyer relationship, and whatever the outcome is, it's acrimonious because it has been handled by lawyers.

We're adding crud on crud, and at the end of the day you just have this pile of stuff that causes an employee not to be treated fairly, nor does it cause an employer to be treated fairly, because they're removed from the process, it's so complex.

Mrs Witmer: We've had people come in here who are injured workers and I think they're very optimistic that this will be the answer to all their problems. Do you see that there will be any improvements to the system as far as quick compensation and rehabilitation?

Mr Dendias: No, absolutely not.

The Vice-Chair: Thank you. On behalf of this committee, I'd like to thank Accuride Canada Inc for its presentation this morning.

Mr Mahoney: Mr Chairman, could I make a request? This will have to go I think to ministry staff because I doubt if the figures would be available, but as soon as possible I would like to know if the calculations can be worked out as to what level of benefit would result over a 10-year period, applying the Friedland formula, based on the best guesstimates of course of what inflation would be for 10 years.

It was done apparently in the PLMAC process to determine the unfunded liability level, so whatever levels are used by that group could be used here. So my request is that we find out, if an injured worker is on 90% of net income in year one and Friedland applies each year, would that reduce that 90% to—what?—87%, 86%, 85%, whatever, over the 10-year period? In each year, what percentage of that 90% remains? So how much is actually being taken away from the injured worker?

Mrs Witmer: For 10 years?

Mr Mahoney: A 10-year period.

The Vice-Chair: That was noted.

Mr Mahoney: Ten years would be fine.

Mr Offer: I'd also like to get some information based

on section 28 of the bill, which adds section 103.1, and get a specific and definite answer as to what clause (d) means.

The Vice-Chair: Noted. Seeing nothing further, this committee stands recessed till 1:30 this afternoon.

The committee recessed from 1200 to 1332.

GARY THOMPSON

JOHN LECHICKY

RICK THRASHER

The Vice-Chair: I call this committee to order. Good afternoon and welcome. You'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd leave a little time for questions and comments. Could you please identify yourself for the record and then proceed.

Mr Gary Thompson: Gary Thompson, manager of staff development, Sun Parlour Home for Senior Citizens.

Mr John Lechicky: John Lechicky, compensation officer for the city of Windsor.

Mr Rick Thrasher: Rick Thrasher, workers' compensation and group insurance for Chrysler Canada.

Mr Thompson: Good afternoon, ladies and gentlemen. The brief presented today, which is before you, the three of us are going to present, but it is a much larger group of employers. Some 78 companies are attached to this brief, who had input through brainstorming and endorse the contents of this proposal that is before you.

This latest package of workers' compensation reforms comes against a backdrop of some rather contradictory statistics. Accidents, both lost-time and non-lost-time, are dropping, from the historical highs of nearly half a million in the late 1980s to a 1994 projection of some 350,000. While it is argued that there is more to be done, the results are nevertheless substantial and significant. At the same time, the duration of claims is also dropping. The number of lost-time claimants who have returned to work within the first 30 days of an accident is 71.5%, well above the average figure in the last four years. Return-to-work percentages at other selected intervals have also substantially improved. These programs also reflect the cooperative efforts of both management and labour.

Against these positive statistics is the discouraging bottom line of the Workers' Compensation Board. Last year the board lost \$504 million. The unfunded liability continues to increase, despite, I think, the collective and truly the best interests of many employers in the province of Ontario. It remains the considered opinion of those people who have attached their name to this brief that the unfunded liability has put the workers' compensation system at risk.

It is in this context that in the next few minutes we'd like to present some comments on Bill 165. We will not comment on every aspect of the bill, but we will focus in on some rather key elements, which, if enacted, would have the greatest and most detrimental effect to the employers who have attached their name to this brief.

I'd like to turn over the microphone to Mr John Lechicky.

Mr Lechicky: Today I would like to talk to you

about the purpose clause that has been enacted by the legislation. I will not review the background of the clause. It is well stated. Everybody here is aware of the PLMAC process in which business and labour undertook to develop this statement of principles to this legislation.

It is, however, our submission that the legislation as drafted does not reflect the joint submission of both business and labour to the government, nor does it reflect the commitment of the government itself. In a letter to the chairman of the Employers' Council on Workers' Compensation dated April 21, Premier Bob Rae said, "A 'purpose clause' will be added to the Worker's Compensation Act which will ensure that the WCB provides its services in a context of financial responsibility. This clause will also address the principles of fair compensation and benefits for workers, as well as an enhanced rehabilitation and return to work."

Unfortunately, the bill as it is before you does not reflect this commitment. The issue of financial responsibility, which was at the very centre of the business agenda for reform, has been excluded from the present purpose clause. As a result, references to the purposes of the act contained in other sections of the bill will not allow any fundamental consideration of financial accountability and responsibility as the board and the Workers' Compensation Appeals Tribunal examine proposals for changes in benefits, services, programs and policies.

We are well aware of the impact of this exclusion of financial accountability from the purpose clause. We only have to look at chronic pain. It will be particularly significant when the appeals tribunal considers appeals which break new entitlement ground in the granting of benefits. In doing so, the tribunal is bound to reference only those principles enunciated in the purpose clause of the act, in much the same way as the Labour Relations Board would examine the purposes of the Ontario Labour Relations Act when examining the fundamental purpose of that legislation.

It is our submission that the committee should amend the legislation to reflect the agreement of both management and labour and the commitment made to the business community by the Premier in his letter in April. We suggest that a reasonable wording for the purpose clause is found directly in the PLMAC agreement.

There has been some suggestion that financial accountability and responsibility cannot possibly constitute a purpose of the act. We reject that idea. The Ontario Legislature determines the purpose of any legislation, and if the Legislature determines that financial accountability is a purpose, then that's what it is. In addition, Mr Justice Meredith, who headed the royal commission which brought about the original Workers' Compensation Act, warned that the act was needed because the financial impact of the previous tort system was threatening to drive employers out of Ontario. If it was a purpose of the act 81 years ago, it remains a purpose today.

I'd like to now have Mr Rick Thrasher speak.

Mr Thrasher: The other issue we'd like to address today is that of experience rating. We mentioned at the outset that those parties involved in the preparation of this brief deal with WCB issues for their companies in

Essex and Kent counties on a daily basis. They are the ones who see the advantage of the experience rating program first hand, and that is why this group is so disappointed with the proposal to alter the experience rating systems and formulas.

1340

The present system, reflected in the NEER and the CAD-7 programs, has been successful in its goals. Through experience rating, companies have a direct opportunity to impact their bottom line in WCB costs, and they have done just that. Health and safety initiatives, creative rehabilitative jobs and permanently modified positions are just some of the initiatives employers have taken to deal with the challenge.

The current system is objective, measurable and predictable, and those who do the work and spend the money get the reward of rebates—simple and straightforward. Those who do not actively pursue such practices find an expensive surcharge tacked on to their assessment. The results have been substantial and give real promise of further improvements. Clearly, many businesses have reacted with enthusiasm and commitment to this challenge.

We would like to highlight just a few examples today from Essex and Kent counties. Number one would be the Sun Parlour Home for Senior Citizens in Leamington, which recently committed \$100,000 to purchase 18 state-of-the art mechanical lifts. Without a statement that such lifts would help reduce accident costs, improve the health and safety of its residents and its employees and offer a positive impact on the home's NEER determination, that \$100,000 in scarce capital dollars may not have been available.

At the Sydenham District Hospital in Wallaceburg, modified work and back care programs have led to a two-thirds reduction in the claims and an 80% reduction in lost-time days. These improvements were driven by management, who saw the results in the rebates and the objective, bottom-line NEER program.

At my own company, Chrysler Canada, we previously had a program that required employees who required temporary modified work to go home and claim workers' compensation until they could return to their pre-injury job. Experience rating provided the incentive for the company to launch an aggressive modified work program, developed with the complete cooperation of the CAW. The result was that over a two-year period our lost-time frequency was cut by 40% and our lost-time days were down by almost 50%.

Finally, at Thamesview Lodge, the introduction of the NEER has brought about an aggressive modified work program. This program has saved both the employer and the WCB thousands of dollars, and the employer has used the objective dollars and cents argument to convince managers that employees must be brought back to work.

This bill proposes to change that. It would, to use the words of the minister, "augment" the existing programs with a subjective system which would examine the health and safety practices of companies, their vocational rehabilitation practices and their return-to-work practices.

We should also note that the proposed subsection (2) in the government amendments speaks about both frequency and costs, and we have to assume that that is because both criteria are used in the determination of rebates and surcharges in CAD-7. But if it is the intention of the government to change the cost-based formula used for the NEER calculations, we cannot support that change.

We contend that the additional factors outlined in the proposed new subsection (3) can only be adversarial in nature due to their subjectivity. There is no indication who will determine the success of the health and safety practices of the company. We do not know if there will be new WCB employees examining practices at a cost of millions of additional dollars. We don't know if this exercise will be undertaken internally in a climate of labour relations which will vary from workplace to workplace. And we don't know the basis for consideration of the vocational rehabilitation and return-to-work practices and programs of well over 100,000 individual employers. Clearly, any such consideration will be a monumental bureaucratic task for a board which unfortunately hasn't even been able to provide us with a NEER statement for June yet because the board's actuaries have not completed the program of expected cost factors and reserve tables.

We submit that this program would result in many more appeals if passed. Employers who now find themselves with a surcharge at year-end rarely appeal. There are few ways to challenge the results of an objective system. However, under the proposed system appeals would be abundant. No employer will quietly accept a surcharge or indeed a reduced rebate resulting from the subjective determination of the health and safety, vocational rehabilitation and re-employment efforts in the workplace.

We recommend that the committee retain the current NEER and CAD-7 systems, which are widely accepted in the employer community and whose bottom line has been a great success, not just in cost savings but in real proactive prevention programs, return-to-work practices and rehabilitative programs.

Mr Thompson: In some of the presentations to this committee last night, it was outlined that the views presented represent not only Kent county but also Essex county and Windsor proper. In that, I'd like to add just a few comments and briefly touch on some of the aspects of the bill that were not presented on the issues of reinstatement and vocational rehabilitation.

It is our view that sections 10 and 27 of this legislation, which set up new, rather punitive penalties for employers, should be removed or scrapped. Both will increase the adversarial nature of a system which is already suffering from too many confrontations and too many appeals. I would just like to simply remind the committee that in the first four months of 1990, there were 1,600 applications for hearings. In the same period this year, there were more than 4,700.

On the issue of providing return-to-work information, there can be no reason to allow any worker to frustrate a return-to-work transitional work program. At the same

time, this bill is placing more demands on employers to do just that. The provision providing the worker's consent should be removed from this legislation.

Finally, on the \$200 supplement, it is our submission this should end at age 65. The trigger for the supplement is section 147(4), which is replaced at age 65 by old age security, and the additional \$200, if it is required beyond that date, can be provided by the guaranteed income supplement.

With those comments, we would be pleased to answer any of your questions.

Mr Mahoney: The issue around mediation—maybe you could help me with this—the legislation proposes that the board will be put into a position to mediate disputes if there's a determination that an employer is not acting responsibly or there are some problems with regard to rehab, that type of thing, and yet, as you point out, section 10 allows the board, presumably adjudicators or case workers, on their own initiative to determine that an employer has violated the re-employment provisions of the act. Section 27 would allow case workers to determine that employers had failed to cooperate in the provision of voc rehab services to workers. What's left to mediate if a decision comes down from either a case worker or an adjudicator that you as an employer have violated these provisions?

Mr Lechicky: Absolutely nothing. The next step is the appeal system. There's no mediation once an adverse decision comes down. The next step for a worker or an employer is to appeal, so there is no mediation.

Mrs Witmer: Thank you for your presentation. You indicated in the section under vocational rehabilitation and reinstatement that your most serious objection here was the two new punitive aspects that were involved in sections 10 and 27. You suggest here, surely if there's an individual employer who's not abiding by the spirit of the law, the board would have the ability to deal with that individual. How would you suggest that employer be dealt with, rather than tarring and feathering all employers?

Mr Lechicky: As it is now, the worker can make an appeal to the compensation board indicating that the employer has not acted fairly. It can be presented by the worker or by the union.

Mrs Witmer: Exactly.

Mr Lechicky: There is a mechanism in place right now.

Mr Thompson: That injured worker has access to reinstatement, the reinstatement hearings branch. Just in the present legislation there are avenues available for an individual who feels their employer is in violation of whatever section in that legislation. Our feeling is that there are options available to them now and that those options are adequate.

1350

Ms Murdock: My question actually is in relation to your page 3, where you say, "Last year, the surplus of rebates over surcharges was over \$100 million." In actual fact, it was over \$150 million and the year before that it was \$25 million, so it shows, in terms of return-to-work

and modified programs, how that system is working. However, the idea when it was initially instituted in 1984 was that the money that would be taken in on surcharges would balance out and offset any payouts. We're now into a position where the offset is \$150 million, and from the year before last to last year \$25 million to \$150 million. If that's any indication of where it's going to go, where is that money going to come from in terms of paying that out to employers, if the surcharges don't equate?

Mr Thrasher: Can I address that? From my own industry's point of view, the target rate for our industry is significantly lower than what we're currently paying. Therefore, we're getting substantial refunds. The move towards our target rate has been directed by the board to be capped at a certain percentage. You can only move so far each year.

Interjection.

Mr Thrasher: Right. But sooner or later we're going to catch up to that rate. This is a temporary thing and we don't want to see changes in the formulas because of a temporary cap on the way in which we move our assessment base. Sooner or later we're going to get to our target rate and at that point assessment should equal surcharges.

The Vice-Chair: On behalf of the committee, I'd like to thank the Sun Parlour Home for Senior Citizens for their presentation this afternoon.

Mr Mahoney: Mr Chairman, could we ask either the deputant or the government to provide this committee with a copy of the letter that's referred to on page 2 from Premier Rae to the chairman of the Employers' Council on Workers' Compensation, wherein the Premier makes a commitment to putting financial responsibility in the purpose clause?

Ms Murdock: I think they submitted it to us last week.

The Vice-Chair: The ECWC package?

Ms Murdock: It was a letter sent to ECWC. They supplied it.

Mr Mahoney: That's great. I'd like it to be tabled separately as an item, with copies for all members of the committee.

ONTARIO FEDERATION OF LABOUR

The Vice-Chair: I call our next presenters, from the Ontario Federation of Labour. Good afternoon and welcome. Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd leave a little time for questions and comments from each of the caucuses.

Mr Gordon Wilson: I want to know if I can pick who gets to ask the questions.

The Vice-Chair: I get to do that.

Mr Wilson: Mr Mahoney would certainly be at the top of my list.

Mr Mahoney: You bet. Leave me lots of time, Gordy.

Mr Wilson: Thank you. My name is Gordon Wilson. I'm the president of the Ontario Federation of Labour.

I'm joined by Mr Jim Paré, our director of organization.

I'll be as brief as I can. You have been given copies of our brief, which has our arguments in more detail.

Our organization represents about 650,000 workers in the province of Ontario. I think it's important for the committee to understand that the federation represents more injured workers than any other organization in this country. Bill 165 potentially affects every worker in Ontario and has therefore prompted the appropriate amount of discussion and controversy in our movement and in our society within the province. I know your committee has been touched by the many divergent views during these proceedings.

The labour movement, I want to say right out front, would not have drafted a bill like this one given the opportunity to sit down in a room and simply draft a bill that we thought would address the concerns of our membership and injured workers. But Bill 165 as we currently see it is a reflection of some very difficult bargaining with some of the province's most prominent employers and within the environment of a difficult economic environment.

The bill must be looked at as a total package and not cherry-picked, as some interests are attempting to do in this current debate. This is a package that addresses the concerns of both the poverty of injured workers and those concerns expressed by employers about finances now and in the future, as well as the very important issues of workplace health and safety and return to work.

For workers with disabilities due to workplace injuries, the most serious problem is that of poverty. Prior to the 1989 introduction of Bill 162 there was no obligation on employers in this province to return workers with disabilities to the workplace. As a result of that, over 40,000 workers on small WCB disability pensions whom the board has judged unlikely to benefit from rehabilitation continue to remain unemployed. Thousands of these workers require social assistance and benefits in order simply to live, which speaks to the level of poverty that they endure.

Bill 162 was supposed to be a revenue-neutral bill. It introduced an obligation on employers to re-employ workers who were injured, which should have saved the compensation system millions of dollars. Unfortunately, many employers have ignored their obligation in that 78% of workers who have been out of the workplace for one year still remain unemployed. These workers continue to collect benefits, and statistics reveal to us that the longer a worker with a disability is away from the workplace the less likely she or he is to return to work.

Unemployed workers with disabilities face major income reductions in the WCB's deeming process, and alternative employment prospects are really quite virtually dim. People with disabilities suffer an unemployment rate of over 40% throughout Canada.

Another key problem area in the system is how accident prevention is viewed and responded to. The current system of financial incentives and penalties, known as the experience rating system, encourages employers to challenge entitlement decisions, appeal claims and hide

claims. Unscrupulous employers—that's not all of them of course, but any unscrupulous employer operating in this province can influence an injured worker not to file a claim—are in turn rewarded by the system in that it doesn't show up as an accident statistic. Experience rating does not penalize employers for claims due to occupational disease nor does it measure good industrial hygiene practices. Ontario's experience rating program does little to reward good health and safety practices at the workplace because it measures exclusively the wrong things.

The subject of the board's finances cannot be ignored either. Today the WCB's financial condition is somewhat healthier than it was 10 years ago. It now has assets which will cover nearly 37% of its liabilities. This funding ratio has improved from 32% in 1984 and will continue to improve if effective health and safety, re-employment and rehabilitation programs and practices are implemented by this bill and the board.

Certain employer lobbyists point out that Bill 165 will result in the unfunded liability rising from \$11.6 billion in 1994 to \$13 billion in the year 2014. In their calculation, they neglect to mention that their \$13 billion is expressed in inflated 2014 dollars and that the funding ratio is actually projected to climb from 37% to 55% in the same time period, if the bill becomes law.

As an aside, I find it curious that these same employers who are so concerned with the unfunded liability do not as well advance a position which says that they assume, as they would with the unfunded liability argument, that virtually every workplace in this province is going to close tomorrow and therefore those obligations must be met—they don't apply that rule as well to pension programs so that every pension plan in this province would be fully funded.

Does Bill 165 address some of the more pressing problems in the system? As a member of the PLMAC, I can confirm that the legislative amendments address the main concerns which business and labour brought to the bargaining table last March. Contrary to much of the commentary we've seen in the media and at these committee hearings, Bill 165, I can say to you, closely mirrors the content and spirit of the business-labour agreement negotiated by the PLMAC.

For the committee's edification, I just would like to point out that when we reported back to the government, at the government's request, after we had agreed to the package deal, both business and ourselves, we had left two crucial decisions to the government—the question of whether or not to advance \$200 to those pre-act workers and also the question of coverage—where neither one of us, the employers nor ourselves, could come to an agreement. We left those decisions to government, which it made.

Attached to our brief is a comparison of the PLMAC agreement and Bill 165, which I think, when you go through it, you will see closely mirrors the legislation now before you.

1400

I would like to say as well that although it is obvious

that the legislation's drafters worked very hard to mirror the PLMAC agreement, they have made, in our view, some serious mistakes in the drafting of the legislative language which have the effect of defeating certain intents of the amendments. In the interests of saving time for questions, we've attached an appendix to our brief which contains suggested amendments to a number of clauses in an effort to assist those who will be drafting the bill at third reading.

Our most serious concern with the legislative language is subsection 51(2), which provides for prescribed medical information. Why should an employer who has rejected the concept of cooperative return-to-work programs and has not implemented a WCB-approved program have access to a worker's medical information? Unfortunately, we believe the present wording of the amendment discourages the cooperative environment which is necessary for successful early return-to-work programs. The worker is obligated to provide the information to an employer who has no obligation to participate in a proper program. We believe this to be the antithesis of being cooperative in the process.

Before a doctor should be mandated to provide information, the doctor should feel comfortable that the information provided will be used to help in the patient's recovery and that the patient's impairment will be accommodated through a workplace program developed and approved by the WCB. The information provided by a doctor must be non-diagnostic in nature.

Bill 165 provides a \$200 monthly increase, as I mentioned earlier, to the lifetime pensions of disabled workers who are unemployed and who were injured prior to 1990. However, it misses a small group of disabled workers who were over 65 years of age when Bill 162 was passed. All workers who are in receipt of a permanent partial disability award and who were 65 years of age before Bill 162 was passed should receive the additional \$200 monthly increase. These workers live in very difficult circumstances and are now over 70 years of age. Bill 165, as currently drafted, denies them this pension increase only because of their age. The compensation they received at the time for their disability was meagre by today's standards and a pension increase for this group is a matter of justice and equity in our opinion.

Although Bill 165 provides the \$200 pension increase for 40,000 disabled workers and 100% CPI inflation for 45,000 of the most vulnerable workers in the system, 134,000 workers who receive WCB disability pensions who have not returned to work will see the inflation protection of the WCB pensions eroded through the Friedland inflation protection formula. In addition, workers injured after 1990 and who have access to the strengthened return-to-work and vocational rehabilitation provisions will also be subject to the new formula. This federation does not willingly endorse the Friedland formula or anything else that would reduce benefits. I draw your attention again to that result being one of bargaining. Experts from around the world agree that cutting benefits will not make a compensation system healthy. There are only two proven methods that have substantial impact upon the system: prevention and re-

employment. None the less, we recognize that this formula was a result of a negotiated process by business and labour in developing the proposed amendments to this legislation and we trust the issues of benefit levels and indexing will be reviewed by the royal commission.

The original Friedland formula does not have a cap on the maximum increase the formula could provide; it recognizes a maximum 10% annual CPI increase with any excess adjustment carried forward to a year with less than 10% inflation. Friedland was designed for pension plans and is not a natural fit for WCB benefits. In a pension plan, the erosion of benefits would not be too severe, given the average life expectancy after retirement. However, for a younger worker, the benefit erosion could become serious in times of high inflation and have lifetime implications.

Therefore, the 4% cap imposed by Bill 165 becomes a punitive measure, in a sense, for injured workers if inflation rises rapidly. The WCB's income will tend to match inflation because it is tied to wages. The WCB does not need this cap to protect the accident fund in times of high inflation. Benefit costs will fall significantly behind inflation by 25% of the CPI, less 1%, as the board income keeps pace with inflation. Although the cap was a part of the negotiated PLMAC agreement, further investigation of the long-term effects of this cap on injured workers and on the system indicates the cap cannot be justified. The federation recommends that the government remove it from Bill 165.

The most effective way to eliminate deeming and ensure that there will not be large groups of workers with disabilities who are unemployed and living in poverty in the future is to make every effort to re-employ them in their pre-accident workplace. The strengthened and streamlined return-to-work provisions and rehabilitation provisions in the bill, along with increased penalties for non-cooperation, will assist in safe and timely re-employment of injured workers.

The re-employment proposed in the bill is not something new; it has been embraced by a number of major employers in the province, including companies like Ford, General Motors, Stelco and Inco. We're not breaking new ground here; we're simply saying it works there and it should work everywhere else. These provisions would have a significant impact on the WCB's unfunded liability.

Workplaces will become safer through the augmentation of experience rating programs which will measure health and safety practices and return-to-work practices in the workplace. These provisions should also have a significant impact on the unfunded liability through prevention of accidents and reduced exposure to hazardous substances.

The board's administration and policy direction will improve with a bipartite board of directors which gives the two key stakeholders in the system an equal say. This is a system much different from one proposed by a member of this committee which is really an employer-controlled Workers' Compensation Board proposal.

Decisions will reflect workplace needs and reality. The success of bipartism at the Workplace Health and Safety

Agency is a testimony to this form of governance. In a short, three-year period the agency board of directors has come to consensus agreement on over 300 decisions, far more than the Legislature itself, and has found it necessary to take a vote only once, far less than the Legislature itself.

The B.C. Federation of Labour, in a speech given recently by Jim Dorsey of the British Columbia Workers' Compensation Board, at the Association of Workers' Compensation Boards conference in Toronto, indicates that their bipartite Workers' Compensation Board is also a success story. Two governments and five labour members have played a role in supporting the bipartite governance structure in British Columbia.

Although Bill 165 addresses some serious problems in the system which will need immediate attention, it does not deal with the larger issues of coverage, entitlement, occupational disease, universal disability insurance, benefit levels, indexing, finances and the board's relationship to other programs. These are issues which have been skirted around and subverted for years because the resources have never been made available to review them properly. We are pleased that the announcement of the royal commission to study the system has been made. Its report should form the basis of a system which could look quite different than the one we know today.

Too many workers with disabilities live in poverty. Dr Annalee Yassi estimated in her study for the Weiler inquiry into Ontario's WCB that as many as 6,000 workers die every year in our province from occupational disease. Our economy is changing and the sectors which traditionally fund the system are shrinking. The non-covered service sector is growing, leaving some 700,000 Ontario workers denied compensation coverage.

We would urge that the Legislature pass Bill 165 into law with amendments which clear up the intent of some of the clauses. Then we must begin the important work of a royal commission to build the system so that it will reflect the needs of our society in the future.

I want to conclude by thanking all of you on the committee for the time to appear before you and to make these few comments. We are prepared to respond to any questions in the time we have left. Thank you.

Mrs Witmer: The PLMAC business caucus has denounced this bill and indicated that it does not support the accord that was approved. I ask you, why was the accord disregarded by the government and why was financial accountability excluded from the purpose clause?

Mr Wilson: Let me begin by saying I could ask you, I guess, the same question, seeking the same answer, because it's a bit of a puzzle to me too, why we've had the reaction from some employers that we have had. I can tell you that the government charged us, both parties, with the task of trying to come to an agreement. We came to an agreement, we came back and we tabled it with the government. There was ample opportunity before the Premier to make those points. No one was more surprised than I was the next day to find out that there were some reservations about the deal they had just agreed to with us. I can tell you, at 4 o'clock in the

afternoon of the second day of our bargaining I was ready to break it off because I didn't think there was enough there for us. I was urged by the members of the business community to stay there. There were some more moves that we made both ways and at the end of the day they were as pleased as we were with the compromise that we had arrived at, and it was a compromise. I am totally at a loss trying to explain the reaction within the business community in denouncing the agreement that they had agreed to.

Mrs Witmer: Well, the bill is quite different from the agreement. I have one more question.

Mr Wilson: I beg to differ with you, Mrs Witmer. That's why we tabled the comparisons that you will find in the back of our submission.

Mrs Witmer: One question: Are you prepared to include injured workers as part of the bipartite board, as part of the labour grouping, and if not, why not?

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Mr Wilson: I think we've been far more busy in our outreach to injured workers than any other organization in this province, and so we clearly would consider a good degree of involvement in this whole process by injured workers, yes.

Ms Murdock: Thank you, Gord and Jim, for coming today. Actually, I'm going to get something clear on the record, I hope, given that both of you sat on the PLMAC. On April 15, the business community put out a press release saying that it was frustrated and disappointed from not going along with the joint business-labour representatives from the joint presentation that was made to the Premier on March 10, and they were angry and upset over the Premier's comments of April 14 in the House when he announced that we were going to be making changes and bring forward Bill 165.

Now, Mr Mahoney has said that the whole thing fell apart upon hearing that Lynn Williams could possibly be the chair of the royal commission and that it had nothing to do with anything that transpired from March 10 to April 14. I would like you to give me the dates, if you can, or the time frame as to how that worked.

Mr Wilson: Well, we negotiated on the first Friday and Saturday in March, which I think was the 2nd or the 3rd, and within a week appeared before the Premier and tabled our agreement. It was not until some time after that that the name of Mr Williams emerged.

Ms Murdock: So then you walked away when you heard about Mr Williams?

Mr Wilson: All I can tell you is that what I began to read in the public press was that "the business community are now opposed to the agreement they arrived at." In fairness to the business community, like us, it's not monolithic, although I would argue that perhaps our structures serve us better in terms of coming to consensus. I can just tell you that the employers, who were major employers that were in this process, had sat down at the table across from us and come to an agreement with us. There were others I suspect second-guessing, and it's too bad they weren't at the table.

Mr Mahoney: Thanks, Mr Wilson, for your presenta-

tion.

Mr Wilson: Call me Gord, Steve.

Mr Mahoney: Gord, I'd like to just go through a couple of points here. You say this mirrors—"closely mirrors," I guess, not to misquote you—the agreement.

I've looked at the agreement. I see the purpose clause; preceding the purpose clause, the statement dealing with "financially responsible framework for decision-making." The purpose clause in the agreement outlines point 2.

I take it, although it doesn't appear clearly here, that what you're saying in the outline of the PLMAC agreement is that it'll go in subsection 58(1) instead of in the purpose clause. But that contradicts the letter that we just recently heard about from the Premier wherein he made a commitment to the chairman of the Employers' Council on Workers' Compensation that a financial responsibility clause would be put in the purpose clause. That was April 21, I believe. So I could see how the business community would feel that somehow the government was agreeing to financial responsibility being in the purpose clause, and I can understand its shock and dismay when it didn't appear.

You say it closely mirrors, and yet under "Return to Work," clause 5(c), it states in the PLMAC agreement, "The existing experience rating program, NEER, will be augmented by an additional incentive component to encourage greater re-employment." I guess my question on that one to you is, is there a difference between "augment" and "replaced by", because that's simply been eliminated? That would not seem to mirror the PLMAC agreement.

There was agreement on the \$200 supplement to be dealt with by the government, but nowhere, Gord, in this document, do I see concurrence by anyone that the money would be found from implementation of Friedland, and that was the biggest drawback and the straw, I guess, that broke the camel's back from the business community's point of view.

The Vice-Chair: And your question, Mr Mahoney?

Mr Mahoney: My question is, we've had people come forward indicating that the OFL is totally opposed, words like "definitely not acceptable" at these hearings. We've been puzzled how organized labour, the OFL or any other individual union, can come forward so adamantly opposed. We had one group, a CAW group, opposed to 17 sections of the bill. If you look at the bill, that leaves eight sections, Gord, that they support out of the entire bill.

We're a little confused how organized labour can come forward here, say it's opposed to all of this, it mirrors the PLMAC agreement, when it certainly does not mirror it in black and white—

The Vice-Chair: Your question?

Mr Mahoney: —and we'd like you to tell how the Ontario Federation of Labour can take a position that's clearly juxtaposed to the original position that you took in support for the PLMAC agreement.

Mr Wilson: I'm going to ask Jim to respond to a couple of the technical points you—

Mr Mahoney: Oh, Gordie.

Mr Wilson: Wait a minute; I want to get into you too. First of all, to explain, I would say that probably the item that took the most discussion in our bargaining with the employers was the question of adding the measurements of return to work and the health and safety workplace as the measurements to join the number of accidents and the frequency of accidents. And we agreed, all of us at the table, that the manner in which we would effectively reduce compensation costs was to add those two components to the existing two in measuring what an employer's assessment rate should be, for a whole bunch of good reasons, including a number of employers who were working very hard in their workplace and weren't getting any credit for it under the current system.

With regard to the organization that you say has come from labour that speaks to 17 changes they would like to make, well, I can understand their frustration. We thought we had a bargained arrangement, as we were asked to do, and then found that the people we'd bargained with started to denounce it. You can hardly expect that the labour movement's going to react anything other than in opposition to that.

Mr Mahoney: So scrap the bill.

Mr Wilson: People are now saying, "Well, maybe there isn't any deal there; maybe we now have some license to move to try and correct the things we thought were shortchanged."

My personal preference is, I think when you negotiate an arrangement like we do in collective bargaining every day with employers in this province, a deal is a deal is a deal. Now, people are going to express themselves, because we're not monolithic.

I'll ask Jim just to respond to a couple of technical points that you raised around financial responsibility. By the way, let me just say this: We ought not to lose sight that this system was not built for the purpose of financial responsibility. This system was built for the purpose of providing benefits to working people in lieu of tort, and you ought not to lose sight of that.

Mr Mahoney: I was quoting the Premier. I'm sorry.

Mr Wilson: Well, you should do it more often. He says a lot of good things.

Mr Mahoney: He speaks well of you.

Mr Jim Paré: Just a couple of issues. I think it's pretty clear to anybody who reads it that financial responsibility is not a purpose. I think the government took the right tack in making it clear how the financial responsibility was going to be tied to the system, and it tied the board of directors to that system. So I think it's much more clear, and financial responsibility just can't be a purpose.

On the issue of experience rating, the amendment was passed last week in Toronto. It was clear that we followed the analogy that George Peaples put forward of the four-legged stool for experience rating. I think the bill follows that. I think there was a mistake in the drafting of the bill. That was cleared up last week with the amendment, and I think it's clear now that experience rating in fact is augmented; it has not been replaced.

Mr Mahoney: So, Jim, you don't agree with Gord that a deal is a deal is a deal, I guess.

Mr Paré: When the deal is broken, I guess it's a little bit difficult to stick with a deal is a deal is a deal.

Interjections.

The Vice-Chair: Order, please. In fairness to the other presenters who weren't allowed to go over, on behalf of this committee I'd like to thank the Ontario Federation of Labour for its presentation. Thank you very much.

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CANADIAN AUTO WORKERS, LOCAL 1520

The Vice-Chair: It's my understanding that the Canadian Auto Workers, Local 636, has cancelled, so we'll bring forward the Canadian Auto Workers, Local 1520, for our next presenters.

Mr Rick Witherspoon: Let me open first of all by welcoming the members of the committee to London. On behalf of the membership of CAW, Local 1520, we'd like to thank you for the opportunity to present our views.

There will be three people involved in our presentation today. I'd first of all like to introduce Peter de Ryk, to my immediate right, a member of CAW, Local 1520, who currently holds the position of benefits representative. Pete represents our members in the administration of various forms of benefit entitlement and is directly involved with the workers' compensation system.

Also joining me today is Bill Such, also a member of Local 1520. Unfortunately, Bill was injured at work and Bill would like to take this opportunity to share with you some of the concerns that he has with respect to the workers' compensation system, specifically in the area of vocational rehab.

My name is Rick Witherspoon. I'm the president of CAW, Local 1520.

Our local represents approximately 3,000 workers at the Ford plant in Talbotville. Our members work in an auto assembly plant. The work is strenuous and highly repetitive due to the nature of work and the fact that we build approximately 60 units an hour, 10 hours a day. Injuries do occur.

As workers representing workers, it's our goal to ensure that any and all injured workers receive adequate compensation should they be injured. Any amendments to the Workers' Compensation Act must ensure that any worker not only receives adequate compensation but that claims and appeals be handled in a just and timely fashion. Today it's not our intention to try to critique all the proposed amendments; rather, to address a few specific areas of concern.

Let me open by saying that we are pleased to see the inclusion of the purpose clause, which provides fair compensation to workers injured in the course of their employment and, of equal importance, the inclusion of the term "occupational disease." Our first area of concern deals with the duties of the board of directors, under subsection 58(1). The specific concern relates to the term "financially responsible and accountable manner." Does this imply that the provisions of the new purpose clause

will fall prey to a financially responsible board? Such a provision will frustrate an already unworkable system. Recently, we are finding that injured workers are not only faced with challenging their employers, but are in fact taking on the board itself. Cost containment should not be a priority when providing fair compensation, and we would therefore recommend in the strongest terms that subsection 51(8) be deleted.

Section 147 provides for an additional \$200 per month to workers receiving pensions. We welcome such an increase. Having said that, we are of the opinion that this section will affect a relatively small group. On the other hand, the change to the indexing formula proposed in section 148 will impact injured workers for the rest of their lives. The act currently provides for full indexing. To provide an increase to some injured workers at the expense of others is totally unacceptable.

Another area of concern pertains to vocational rehabilitation. Section 53 provides for the inclusion of the word "employers." Voc rehab is provided for an injured worker, not for the employer. Surely if there is to be an inclusion in this area, it should be in the injured worker's best interests. We'd recommend that the word "employer" be deleted.

The final area of concern that we want to address today deals with the proposal for an experience and merit rating program. On the surface, any program which provides health and safety practices, provides for the assistance of returning an injured worker to his job, deserves some merit. Unfortunately, as workers' reps, we're somewhat sceptical in that we feel this kind of approach is reactionary rather than proactive. In a system already fraught with employer abuse, it's our opinion that such an approach will see injured workers returning to work too soon, improper reporting of claims and additional appeals in an already overloaded appeal system. This type of rating scheme is not in the best interests of injured workers, and we would recommend that it be deleted.

At this time, I'd like to turn the microphone over to Brother de Ryk to provide some specifics on the points that we've highlighted. As previously mentioned, Pete represents the members of Local 1520 in the area of benefits, a position that he's held for the past 20 years. During that time, Pete has witnessed numerous changes to the workers' compensation system and holds some very strong opinions as they relate to the bill and how it will impact on injured workers.

Mr Peter de Ryk: Thanks, Brother Witherspoon. First of all, I'd just like to expand on some of the four points that have been raised in the beginning of our brief. As I read through some of these things, I've also proposed some possible changes to the act itself.

The first change that we are extremely opposed to is the addition of subsection 58(1). That's the duties of the board of directors: "The board of directors shall act in a financially responsible and accountable manner in exercising its powers and performing its duties." We feel that this section blatantly contradicts the new purpose clause under the act in section 0.1; that is:

"(a) to provide fair compensation to workers who

sustain personal injury arising out of and in the course of their employment or who suffer from occupational disease and to their survivors and dependants;

"(b) to provide health care benefits to those workers;

"(c) to provide for rehabilitation services and programs to facilitate the workers' return to work; and

"(d) to provide for rehabilitation programs for their survivors."

It's obvious that none of these clauses under section 0.1 would be possible if they were controlled or guided by cost containment. Are we now going to only allow payment of benefits for occupational disease, work-related injuries, rehabilitation, retraining or assistance to survivors if the board can afford it? Of course this cannot be allowed to happen, so therefore it is our strong recommendation that these two sections are completely contradictory to each other.

Further to that, subsection 148(1): We are totally opposed to the change in the indexing formula from the present full indexing based on the consumer price index of Canada. It is apparent that an attempt is being made by our lawmakers to convince us that the reasons for the change to three quarters of the Canadian price index minus 1%, to a maximum limitation of 4%, was designed to compensate those who were and are undercompensated. This is to be done at the expense of those who are overcompensated, according to the business community, the undercompensated being injured workers who are receiving a subsection 147(4) supplement, which is the older workers' supplement. The overcompensated are those who receive a partial permanent disability pension but are presently working.

The problem, of course, is that the number of injured workers who qualify for the additional \$200 increase is very limited, and the board is presently trying to eliminate as many of the 147(4) supplements as possible when their two-year evaluation comes due. The impact on a permanent partial disability pension due to this reduction could have an effect on a younger worker for life, particularly if the disability prevents him or her from working somewhere in the future. Indexing never keeps pace with the cost of living, and this reduces all WCB benefits for life.

I would like at this point in time to give you an example of the abuses that are going to take place with respect to changing the indexing, at the cost of perhaps thousands of workers in the future, and that the only positive sense to that is the additional increase of the \$200 to people who are entitled to 147(4) benefits.

At this very present time, I have received and of course have appealed an issue where 147(4) benefits were eliminated for one of our injured workers. This injured worker was of—and it seems to be rather coincidental that it took place just prior to the enactment or the possibility of enacting this act. However, this injured worker, who has received 147(4) benefits for the past two years as a result of a major injury—both shoulders, right arm as well as a major back injury to this person—is presently in receipt of a Canada disability pension. He's also presently in receipt of a Ford disability pension, of

which we all know the criteria. That is total disability.

However, his 147(4) benefits, at the conclusion of the two-year evaluation—he was deemed to be able to return to work, period, and therefore his 147(4) benefits were removed. This person, of course, is in no different position today than he was two years ago when, through a lengthy vocational rehab assessment and trial period as well, his injuries prevented him from benefiting from vocational rehabilitation and as a result was awarded 147(4) benefits, and those benefits should continue today.

It's obvious also by having close contact with the office of the worker adviser in the London office that this is becoming a very great problem in that they have up to 100 of these particular types of cases. So it's obvious that this change is going to really reflect a reduction in the actual cost of payments out of the WCB system while trying to make it look as though they're actually helping a small group of people somewhere in the future.

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To continue on with the brief, subsection 53(3), which deals with vocational rehabilitation services: We have several major concerns with these proposals and we totally disagree with the wording of 53(3). This subsection should be changed to read, "The board shall provide the worker with appropriate vocational rehabilitation services." After all, it is the injured worker who requires rehabilitation and certainly not the employer.

The board must be mandated to provide vocational rehabilitation in an active manner. The employer should not have any influence on the type of rehabilitation, otherwise the decisions with respect to the type of assistance or rehabilitation provided will be based on cost rather than what is required to successfully rehabilitate an injured worker.

Wording it as above would require the board to devise policies to rehabilitate an injured worker actively and in a positive manner. However, due to the present and proposed language, which allows the employer to participate in the vocational rehabilitation plan, a great deal of abuse has taken place not only by the employers and their representatives but also by rehabilitation staff of the board itself.

We have brought with us today one of the many injured workers who have been abused by the system. Mr William Such has sustained a major injury to his lower back, resulting in the need for lumbar decompression, which unfortunately was not very successful. As you can see, Mr Such is not a very old person. After reaching some stability in his medical recovery, he was assigned a vocational rehab case worker and a goal was designed for Mr Such where he was told to use the available information from Canada Manpower, unemployment help centres, newspapers and any leads he could obtain to seek possible suitable employment.

The salary expectation at this point was set at \$6.35 to \$7.50 per hour. His medical condition ruled out physical work. This, coupled with his educational background, limited his possibility of obtaining a higher-paying sedentary type of occupation. However, it was always Mr Such's desire to return to work at Ford Motor Co, which

of course paid a higher wage. Mr Such at this point was incorrectly locked into a future economic loss of 1% which, incidentally, was \$22.88 per month. This had no bearing on his income at that particular time as long as he cooperated with the vocational rehabilitation system, in that he received the full supplement.

Mr Such did everything requested of him and followed the plan as set out. He went out and sought work that was recommended to him. One of the jobs in question recommended to him was with an appliance company in St Thomas, Ontario. The potential employer was unable to hire him because the job required Mr Such to deliver appliances and he would have to do a lot of heavy lifting, which he was not capable of doing. On his own initiative Mr Such then contacted a former employer at Fanshawe Park. He was told that when the park reopened they would try and find him some light work that he might be able to do. Mr Such did not wait for this to happen and instead he contacted a local food distributing company. He was successful in acquiring a position with them which was to commence in January 1994.

When he contact the Workers' Compensation Board vocational rehab section to inform them of his success, he found that he had been assigned a new case worker. The new case worker decided that he should not take this job and that he be retrained for a higher-paying job because of the future adjustment to his future economic loss award.

Again Mr Such complied and enrolled at Fanshawe College for a level four upgrading basic skill development course. This course was for eight hours a day and five days a week. Both his family physician and surgeon clearly stated that he would not be able to cope with the constant sitting and limited him to one to two hours at the most. He tried anyway, under the threat that he would be cut off for not cooperating with voc rehab.

Mr Such tried to attend classes in the beginning. However, he was unable to sit for the required time in class. He even tried to use a podium to alleviate the condition, but with no success. As he was unable to attend full-time, he was deemed to be non-cooperative and was cut off from his vocational rehab supplement. This, of course, resulted in an income of 1% future economic loss. As everyone in this room would know, \$22.88 per month certainly is not a sustainable income for any young person with a family.

So, as you can see, the goal in this case was not to assist the injured worker in vocational rehabilitation but to save money by basing the FEL at 1%, to return to his former employer, which was out of the question, and to design a rehabilitation program that he was unable to meet. This case is only one of the many abuses workers are faced with under the voc rehab because of the involvement of the employer and the attempt to use financial restraint.

Another blatant example is the use of methods by the board that border on entrapment. This is where questions are asked of injured workers, for example: "We have medical information that suggests you are no longer totally disabled. Do you think you can return to work?" This is just after the worker's finished a daily physio-

therapy session and has been told by a doctor that improvement is not very good and with nothing to suggest that the worker could go back to work. If the injured worker is naïve and doesn't smell a rat, the response will be that he's not capable of returning to work. The result of this is non-cooperation with voc rehab and his or her benefits are terminated.

These are not isolated cases. These are probably more the norm than not, but happen constantly due to the intervention by employers, fuelled by cost containment and practised by the board. Changing the proposal as suggested would go a long way in curbing the unjust abuse.

At this point in time I would like to call on Bill Such, who actually is the injured worker who was involved in this particular case, if anyone has any questions on his behalf as to what actually transpired, or perhaps he can even expand on the type of treatment that he did receive through the vocational rehab system. Perhaps he can also relate to us as to the type of income he presently has to survive.

The Vice-Chair: Excuse me, if I may. You have about three minutes left in your time.

Mr Winninger: It seems to me, from what I've heard from presenters, whether they're on the labour side or the management side, frequently financial responsibility and a good benefit package for the injured worker are somehow mutually exclusive, and I noted with interest your remarks on section 58.

The evidence that I think I've heard over the past couple of days would support the conclusion that one way to bring down the cost of the unfunded liability is to have a safe and speedy return of the worker to the workplace. We've heard from several parties, successful workplaces, where the labour and management work together to ensure the workers are reintegrated into the workforce, but we've also heard from other groups that have indicated the challenges, if not the frustrations, they've experienced in bringing labour and management together to get workers back into the workforce.

I would ask any of you what your experience with Local 1520 has been with regard to the kind of cooperation or joint efforts that are made to get workers back.

Mr de Ryk: Perhaps I can answer that. As far as we are concerned, within an internal system with the employer that we actually work for and/or represent the workers of, we have a very excellent internal cooperation system with respect to returning injured workers to work.

However, the act itself and the regulations that we have to deal with either contravene that in some cases or are open for open manipulation, as I've just suggested in the case of Mr Such here. It's not isolated. However, we can control the actual speedy return to work. We cannot control the manipulation that comes afterwards with respect to the appeal process either by the employer and/or the system.

Further in my brief—I'd like to continue if I could—I do touch on some of these particular items as to what the experience rating section of it does to our particular situation. If I may, I'd like to continue on with that.

The Vice-Chair: We don't have time for that, but the committee members will be reading that. Mr Offer.

Mr Offer: I note that your local represents 3,000 workers and your very eloquent arguments about aspects of the legislation, where you say the type of rating scheme that's being proposed is not in the best interests of the injured worker. You ask for it to be deleted. On the basis of the Friedland formula, you indicate you are totally opposed. You go on to say its implementation would be a great injustice to injured workers in the future. On the basis that you're here representing 3,000 workers and that the government does not change these areas of the legislation, are you in favour of the bill?

Mr de Ryk: Am I in favour of the bill?

Mr Offer: Based on what you've said in this presentation.

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Mr de Ryk: We are not in favour of the bill the way it's currently written. What we are in favour of, of course, is amendments to that bill as we've outlined in our proposal. If you read the last page of my particular brief, it reflects that as well. No bill, of course, is totally and completely acceptable by any group. I'm sure the labour group can't accept every word in the bill, nor can the business group accept every word in the bill, and I'm sure that no parties that are represented here on this particular committee can accept every proposal of this bill. However, if you want us to say we are for or against this particular bill, we're not going to do that. What we will tell you is that this bill could be adjusted in order to become acceptable to all groups.

Mrs Cunningham: Thank you for your presentation. I did read to the end of it. I should be saying something to Bill. Everybody here feels very frustrated and disappointed that you've been treated the way you have by the system. I'm aware of more cases like yours than anybody would want to admit, and some of you know what's been in our office. You've summed it up nicely, I know, Rick, but Peter, you've summed it up nicely at the very end.

I think your last sentence indicates the frustration with the hundreds of thousands and sometimes millions of dollars we spend on paper and these hearings where so little is gained and so little is heard. When you say, "We would also suggest that this committee investigate the possibility of introducing a universal income system that is fair and equitable for all disabled people in the province of Ontario," I think you're showing your total frustration with a workers' compensation system that just simply doesn't work. I share your frustration and I thank you for your brief.

Mr de Ryk: Thank you.

The Vice-Chair: On behalf of this committee, I'd like to thank the Canadian Auto Workers Local 1520 for its presentation this afternoon. Thank you very much.

INJURED WORKERS IN NEED (LONDON) INC

The Vice-Chair: I'd like to call forward our next presenters from the Sarnia Injured Workers in Need Inc. Good afternoon and welcome to the committee. Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you

were a little briefer than that and allowed time for questions and comments from each of the caucuses. Please identify yourself for the record and then proceed.

Mr Anthony Barbato: My name is Anthony Barbato and I am an executive director of Injured Workers in Need Inc, Sarnia agency. I thank you and the committee for allowing me to be here today. I was looking forward to an occasion like this to express the concerns that all injured workers in Lambton county and perhaps throughout Ontario have had for a long time.

Bill 165 makes changes and amendments to the Workers' Compensation Act. Many social crimes have been committed in the past against workers. We all know that. We only have to remember the days when children in England and other parts of the world were forced to work long hours in coal mines and other industries for a wage that was not even enough to survive. That problem is solved now, thanks to the birth and the spreading of all trade unions. Workers have always produced wealth and will always produce wealth, but that wealth has gone and will always go to those who have the power to take it.

The Workers' Compensation Board has also committed crimes against injured workers in the past. The most blatant example is the fact that for 70 long years all workers who had become disabled because of their job history had been denied compensation—70 long years. It has been only since 1985, after the Supreme Court ruled on it, that the Workers' Compensation Board began to recognize disabled workers with a job-related disability history: "In determining any claim under this act, the decision shall be made in accordance with the real merits and justice of each case." This is contained in subsection 4(4) of the act and it is also mentioned at the end of each section of the Workers' Compensation Board operational policy book.

The Workers' Compensation Board and its operators are the administrators and guardians of the act, which is a lot. What puzzles me here is, how can justice be achieved if the very people who administer the law are given immunity from being reprimanded in any way for violating that same law?

Section 76(3) and (4) are the only parts of the act which give injured workers a chance to make Workers' Compensation Board operators accountable to the crown for breach of duty or violation of the act causing damage to them. This bill is repealing subsections 76(3) and (4), which allows injured workers to sue the crown for a tort received by the Workers' Compensation Board operators and replaces it with a clause of absolute immunity for the board and its operators. With the elimination of subsections 76(3) and (4), there is no more liability of the Workers' Compensation Board in the act but only an accountability of the board to the Ministry of Labour through a memorandum of understanding once a year. It has not been explained to anyone what this memorandum is going to impose.

Article 15 of the Canadian Constitution clearly says that, "Every individual is equal before and under the law and has the same right to equal protection and equal benefit of the law without discrimination...." I do believe that this article is being violated by this bill.

Article 24 of the Canadian Constitution: "Anyone whose rights and freedoms, as guaranteed by this Charter, have been infringed or denied, may apply to a court of competent jurisdiction to obtain such remedies as the court considers appropriate and just in the circumstances." This article also, I believe, is violated by the Workers' Compensation Act. If a judge, and in this case the Workers' Compensation Board, is charged for violating some laws, he cannot appoint himself judge and jury at his own trial and that's what is happening with the Workers' Compensation Board.

Sure, all the changes in this bill are great and admirable, but unfortunately those same changes are ineffective, as most of the act is now, because there is nothing in it now that makes the Workers' Compensation Board operators responsible and liable for damage procured to injured workers. In my view, this whole exercise becomes just another political game.

I strongly believe that subsections 76(3) and (4) should be left unchanged. If the Honourable Minister of Labour cannot share this view, he should at least insert something specific in the bill which would guarantee injured workers and employers a remedy for the devastating consequences of Workers' Compensation Board operators' negligence, incompetence and violation of the act.

I am very well aware of article 33 of our Constitution too, the "notwithstanding" formula or clause so debated at the time, but I also know that the clause has a five-year limitation. In my judgement, it should have never been applied, even with its limitations, by any province with regard to article 15, because that constitutes human rights violation. What would China say if it knew that we here in Ontario violate human rights. What would the international commission for human rights say if it knew that Ontario is violating human rights? Would they impose sanctions on this province? We don't know.

1450

Flexibility, simplicity, efficiency: These are three magic words which would work wonders if they were applied to the claims adjudication process. There is nothing in this bill about flexibility to shorten the long, complex and painful process of adjudication, which is costing the system a tremendous amount of money, time and stress.

A simple clause for negotiating quick settlements among injured workers, employers and WCB would be very appropriate. Claims, which are now dragged on for four or five years, could be solved in months. This would save billions of dollars to the system, and I'm not just referring to the compensation system here but the whole system. This may seem an exaggeration, but if you bear with me for just a couple of minutes, you will see that it is not.

In a study made by the Ontario Medical Association released to the public just a few weeks ago, it has been found that children in low-income families with stress and hardship tend to develop violent behaviour, which in many cases becomes uncontrollable and violent. During the dragging on of claims, many injured workers end up on welfare. Their families are destroyed with stress. Their children some day may become criminals. The conse-

quences of all this will cost the system a lot more than if the system would allow these families to make a decent living.

It is true that the Workers' Compensation Board should not take the responsibility of the welfare department, but it is also true that the welfare department should not pay injured workers who should be on compensation. All the dragging and shoving of people back and forth is creating huge costs which in the ultimate analysis have to be paid by all of us, and that includes you and me. We have five social programs, perhaps more, which are shoving people on to each other. It would be a lot cheaper to merge them and come up with one plan, a guaranteed income plan—and, by the way, this is done in many, many countries—which would prevent stress and hardship which are causing most of our social problems.

In this presentation I'd like to mention also one other concern, section 63 of the act. The authority to issue regulations given to the board by the act should belong to Parliament. Regulations issued by the board will eventually become law to be abided by all people in Ontario. I really believe that in no circumstances should members of Parliament delegate their legislative authority to other bodies in our system.

To conclude: I'll just make this conclusion and be ahead of the time because I expect some questions. All our work should be devoted towards progress of our civilization. We all should contribute to create harmony and cooperation among ourselves. Instead, we are only creating hardship, despair and hatred, and this is completely the opposite of what each and every one of us should do. We are going the wrong way. Thank you. I would be very glad to answer all kinds of questions, no matter how many there are.

Mr Offer: Thank you very much for your presentation. I guess I have one question. Clearly, you've read the legislation; you can see that through your presentation. You've read the bill very carefully and you have a long history in these matters. From your experience, based on your readings, do you support the bill as presented by the government in its current form?

Mr Barbato: I beg your pardon? Did you say "use force"?

Mr Offer: Do you support, are you in favour?

Mr Barbato: Many changes are changes that are long needed, but the real roots of the problem are not dealt with in this bill. The roots of the problem with compensation are the devices they use in cooperation with employers—now this is not to accuse anyone, but you know, all of you know, I know and everybody knows that when there are two conflicting interests and they hit each other, there is a thunder, there is a lightning, there is a storm. We know that.

There are two different forces. One is negative, one is positive, whatever you want to call this, and every time they hit each other there is going to be a storm. We know that. When you drag and you use those devices, like vocational rehab, who is going to determine the suitability of employment when these people are offered the modified duty, because it is very vague. Is it the family

doctor? If the family doctor says that job is not suitable, then the compensation may say: "No, we can override that. For us it's suitable, so we cut you off."

This is one of the things, and the claim is dragging. Hardship on these families is increased, productivity goes down, stress goes up. The cost is huge to the society. The cost is huge to everyone. This is the root of the problem. We have to simplify the system. The system is too complicated and it's too subject to devices which are of two conflicting interests and therefore creating hassles for everyone, not just for me as claim representative, but also for these people, injured workers, for the employers.

I feel sorry for them. I believe they can no longer sustain the premiums to support the system, to be frank with you. They cannot, so the system now—and when I say "the system," it's not just compensation, it's the whole system—has to find a way to get together with Mr Chretien, he's a very understandable man; with all the association of municipalities, they're understandable people; the premier of our province and other provinces—sit together and say, "We've got to solve this problem." We have too many programs, too many regulations, too many conditions to be met, too much paperwork. All this paperwork, the conditions and stress it causes, is the problem.

We wouldn't have any unfunded liability in this way, we wouldn't have all these problems in this way, if we create a guaranteed income plan that is unique throughout Canada like in other countries in Europe, then we automatically cancel the problem. We don't have to talk in particular of this guy who the doctor said—and it's a story like this book. Here is another one, it's another double book. You know, this is ridiculous. The simplifying of the system is the key to solve all the problems and if we don't do that we are going to stack all our problems to the point where we are going to be buried underneath them. And not me, not you, will be able to get out of it.

Mrs Cunningham: Thank you very much. It's nice to hear people with some common sense.

Mr Barbato: Thank you.

Mrs Cunningham: It's sad to see people who are injured and who have suffered from a system that we have been living with probably in this province for the last 30 years and has increasingly become worse—at least as long as I've been at Queen's Park representing London, for which I can only speak, in the last six years. To me, the day-to-day work of this whole system certainly doesn't work on behalf of the people who come into my office.

But I should tell you, there may be a couple of things you'd like to look at. We had a Dr Lacerte present to us last evening from the University of Western Ontario and Parkwood Hospital, telling us that we don't have properly trained professionals in the area of vocational rehabilitation in Ontario. We have no courses, and the University of Western Ontario, through its medical school, has informed us, or myself, that this will take place a year from now. One of the problems is, we don't have the specialists we need to do the work to help you.

Mr Barbato: That's right.

Mrs Cunningham: The second point that I think you made so well—I personally, as a politician, am fed up with words and paper and public hearings. I've been doing it for six years and I've seen no gain, so I'm fed up. What it takes is day to day making sure that a system works and is accountable, and I thank you very much for your words "flexibility, simplicity, efficiency." They're not that expensive. They save us money and maybe our children would have more jobs if we work that way.

Mr Barbato: Exactly.

Mrs Cunningham: I'd like to thank you very much for your presentation today.

Mr Ferguson: Just very briefly, I just have a comment. We want to thank you for your straight-from-the-heart presentation. I think we understand what you're advocating at this point, given simply the myriad of programs out there. You're suggesting that what we really ought to be examining is some sort of a guaranteed annual income for people, and I think most of us would agree with that and probably the time has come to look very seriously at that question.

Just so you don't leave totally disenchanted, the purpose of this bill is pretty clear: to put the WCB on some sort of solid, financial footing. Following this will be the royal commission and we're hopeful—I am hopeful and many presenters who have appeared before this committee have expressed hope that the royal commission will in fact come up with some recommendations in order to overhaul the complete system in the future. We agree that's what's needed for 1994. Thank you for appearing today.

Mr Barbato: You're welcome.

The Acting Chair: Thank you. On behalf of the committee, we appreciate you taking the time to come down, and I'm sure when that royal commission comes around, you'll have many comments to bring forth. Thank you on behalf of the committee for your hard work.

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 793

Mr Terry O'Neil: My name is Terry O'Neil. I'm the business manager of the London District Building and Construction Trades Council. My colleague who's accompanying me today is Ms Marnie Niemi, who is a compensation representative with the International Union of Operating Engineers, Local 793.

To begin, if no one else from the construction community has welcomed you to London for these hearings, please allow me to do so on behalf of those who have built this city, are continuing to build this city and will for many years to come.

I'm speaking on behalf of the International Union of Operating Engineers, Local 793. It's an affiliate of our building trades council. It is a union that was chartered in 1919. Local 793's territorial jurisdiction now encompasses the entire province of Ontario where it represents in excess of 10,000 members. The majority of the union's membership is engaged in the operation, repair and maintenance of cranes, shovels, bulldozers and similar heavy construction equipment. Local 793 also

represents employees across the entire employment spectrum including the employees of municipalities, scrapyards, industrial cleaning contractors and waste disposal companies.

In order for this committee to fully appreciate the impact of the proposed changes on our members and other construction workers in this province, it is necessary to sketch briefly the unique characteristics of our industry and how it differs from the industrial sector. In 1962, the Royal Commission on Labour-Management Relations in the Construction Industry here in Ontario identified three ways in which construction differed fundamentally from manufacturing: First, the construction industry was subject to seasonal and cyclical fluctuations in the economy; second, the workforce was characterized by mobility, flexibility and specialized ability to perform construction industry tasks; and third, the products generated by the construction industry were not easily transformed from place to place, so that typically workers moved from job site to job site. In the manufacturing industry, the location of the work does not change, it's the product that moves.

These characteristics are as true today as they were in 1962, 32 years ago.

With this framework in mind, I would like to begin my presentation by applauding the provincial government in recognizing that the workers' compensation system is one in need of a major overhaul, if not radical surgery. Bill 165, I feel, captures the main areas of consensus reached by the Premier's Labour-Management Advisory Committee. More importantly, it makes a good attempt at balancing the Workers' Compensation Board's twin challenges, those of maintaining costs and making the system fairer for injured workers.

In terms of achieving real fairness in the system, I particularly favour the purpose clause, section 0.1, as it will be of benefit to our members in their dealings at all levels of the board. This clause finally addresses what many of our injured members have been denied for years; that is, reasonable compensation and equal access to rehabilitation services. Having this purpose enshrined in the legislation itself will give injured construction workers some leverage in their claims and the confidence that fair treatment lies at the heart of the board's mandate.

The bipartite board, sections 56, 59, 60 and 66, is an amendment which also pleases Local 793 in that it attempts to placate both labour and management by giving each an equal voice in determining the Workers' Compensation Board's policies. The bipartite structure is commonly used in our industry with great success. Health and safety committees, grievance arbitration boards and many government tribunals, such as the Ontario Labour Relations Board, have all adopted this format and it's working quite successfully. In fact, the trustees of Local 793's pensions and benefit plans and training trust fund are jointly represented by the union and our contractors, our partners, the people with whom we work on a daily basis. With the bipartite board, both labour and management will be on an equal footing to make the system more effective and more responsive.

Since we live in a dollars-and-cents world, I would like to discuss what, for us and our members, is perhaps the most important amendment. Subsection 147(14) allows an additional \$200 a month to injured workers on pensions who are in receipt of the equivalent of old age security. We feel this is an issue of primary concern for the members of Local 793.

To understand why this particular change is so important, the committee must appreciate the incredible injustice that the system put upon our permanently disabled members who were injured prior to 1990. Through no fault of their own, these members have been financially devastated simply because they worked in construction. Why? This goes back to the unique characteristics of our industry, as I noted earlier. When those characteristics are combined with the fact that our members are paid relatively high wages to perform specialized and strenuous work but yet have few transferable skills, the end result had the effect of automatically denying them access to rehabilitation services because they, according to the Workers' Compensation Board, could not approximate their pre-injury earnings if the Workers' Compensation Board was to offer training.

1510

In other words, when the Workers' Compensation Board deemed that our injured workers could only earn \$9 an hour as parts assemblers and that this didn't come close to their previous wages, they were consistently cut off the system with no other help in sight. Instead, they were simply given a subsection 147(4) supplement, currently standing at \$387.74 a month, and a small pension, nothing more. Clearly, the system failed them terribly. These members can no longer work at their trade because of their permanent injuries. Many have families to support and, like all of us, they have bills to pay. Yet the Workers' Compensation Board shut the door on them. I ask you, where is the fairness in this? The \$200-a-month pension increase is in Bill 165, I believe, to right this past wrong. In no way can we say that this is clearly adequate, and in no way will this rectify what the system has put them through, but at least it will provide some financial relief and give some hope for their standard of living.

The next point I would like to address is the Friedland formula. This is another aspect of Bill 165 that will dramatically affect the income of our members. Subsection 148(1) deals with the de-indexing of pensions to 75% of the consumer price index minus 1%, with a cap of 4%. This is problematic in several ways.

First, most of us will collect our pensions from work at the age of 65. When we retire, we have approximately 20 more years to live. What about the worker who is 40, 30 or 20 when he or she is awarded a pension? To de-index permanently disabled workers to a lifetime of increasing poverty is anything but fair compensation. Further, members of this committee, it is an insult to the integrity of those who have done so much to build our nation.

Second, to put a limit of 4% indexing is frightfully unjust. This low percentage will continue to penalize further in times of high inflation. As the cost of living

risers, injured construction workers will be trapped in a downward spiral year after year. This aspect of the amendment is most certainly not in keeping with the purpose of this act as outlined in section 0.1. However, we are well aware that the Workers' Compensation Board is struggling financially and changes must be made to get the board back on its feet. Cutting benefits by implementing the Friedland formula is not the answer. Pure and simple, this approach would be reforming the system on the backs of those who need help the most, our injured workers. In our view, the answer lies in strengthening those sections in the act that address prevention and re-employment.

Preventing accidents must be the number one priority. You have heard a great deal about the bureaucracy, the way people are tied to it and how they have become insensitive to it, and the way in which the injured workers consequently suffer. I am departing here from the written text, if you don't mind. Let me give you a current example where prevention is of utmost importance to our industry. Right now, we have forced an issue on the 401 which has caused the night construction to come to an end until the proper precautions are taken to protect the lives of our workers. We have people working out there every night and every day within six inches of traffic moving at 120 kilometres an hour that cannot be slowed down and will not be reduced to one lane because the Ministry of Transportation tells us: "I'm sorry. We really don't want to inconvenience any of our tourists." Well, too bad. We'll shut it down, because if not, if we lose any of those workers or they are permanently injured, we're going to take those bodies and those people in and put them right on the desk of the Ministry of Transportation and let them solve the problem. But let me go back to where I was.

Only when total accident frequencies begin to decline and those who are injured get re-employed by their employer more quickly will you achieve a true balance between fair compensation and fiscal responsibility. In short, we agree with certain aspects of the legislation, and I've outlined those for you. However, there are amendments of a more technical nature which cause us concern. These are the experience rating, the concept of jurisdictional compensation, the absence of union representation in the vocational rehabilitation process and the fact that the re-employment obligations of employers have not been strengthened for the construction industry. How can we attempt to lower the unemployment rate of injured workers, which currently stands at 40%?

Further, in our view, several other problems need to be addressed in the proposed legislation. The deeming provision as it applies to future economic loss serves only to further reduce the incomes of workers who have not returned to a phantom job and continues to be a punitive measure which hurts more injured construction workers than it benefits.

With regard to experience rating, there need to be strong provisions which penalize employers who fail to fulfil their obligations to re-employ injured workers fully. In fact, employers who encourage their employees to collect private disability insurance and not file WCB

claims are doing so at an alarming rate. Many employers are exploiting loopholes in the legislation to avoid higher assessments, and they rely on the board's slow administrative process and inaction in levelling penalties. The current funding ratio of 37% would be better served if these employers paid their fair share. Section 103.1 of the proposed changes is a move in the right direction in terms of closing existing loopholes. Strict enforcement of the experience and merit rating programs, however, will be crucial if the programs are to be truly effective.

I trust these matters will be the focus of the royal commission and I look forward to discussing them in the future so that labour, management and government can work together in developing a fairer compensation system, one which more accurately reflects the needs of the construction community and of our society as a whole.

Thank you for this opportunity to present our views and the views of the leadership of Local 793. We now look forward to any questions you may have, and Marnie is more than prepared to handle the technical details.

Mrs Cunningham: Good to see you here. I noted that you were keeping an eye on the employer when it comes to building roads in Ontario. I'm glad you did that. I'm sure the members will take your concerns back to the government.

Mr O'Neil: Please understand that point; don't be under a misconception. We are certainly keeping an eye on the employer, but the employer is working to guidelines laid down by the Ministry of Transportation, and those guidelines are in fact violated by the tendering terms. The employers for whom we work in partnership are being forced through no fault of their own to work in an unsafe manner.

Mrs Cunningham: My comment, of course, still stands.

Mr O'Neil: Exactly.

Mrs Cunningham: I want to ask a question in that regard, because you started by talking about the purpose clause and how you were happy that it spells out reasonable compensation and equal access to rehabilitation services. I just wanted to let both of you know that I think probably 80% of the criticism that we've heard so far with regard to the workers' compensation system doesn't have nearly as much to do with promises in legislation and raised expectations as with the day-to-day workings of the system itself, all parties, which I'm glad you addressed.

1520

I'm wondering, within your own group, how you now with this purpose clause will be monitoring these activities, not just of the employers but of the system. I'll just throw in two pieces. We heard last evening from a professional that we don't have trained vocational rehabilitation workers. That's just one piece. You may have heard me say that earlier. We also heard from an expert this morning, M. C. Warren and Associates, with regard to the amount of time it takes to make any changes to the system. Even forms take six and seven years. Whole generations of people could be unemployed

that long if that purpose clause doesn't work. I am wondering if you've thought about that and what you intend to do about it.

Ms Marnie Niemi: Thank you, Dianne. I would like to address that concern. That has indeed been something that we have discussed at great length within Local 793, how we're going to address the monitoring of the board in its day-to-day operations. Currently the way Local 793 operates, unfortunately a lot of our members have enormous difficulties with the board in terms of language difficulties, literacy difficulties, and by the time a claim comes to my office, quite often it's so far gone, it's years old. We are attempting to implement within Local 793 broader educational programs to be aware of policies within the board, and, for our membership, exactly what their rights are under the policies that exist.

Addressing your concern of the timeliness of change within the board, currently the only recourse that unions have had to influence change within the board has been to take to WCAT various issues repeatedly and hope that the board will take precedent set at the WCAT to heart. We're hoping that with equal access and fairness enshrined within the purpose clause, we can continually, as representatives representing injured workers, refer to that purpose clause in the initial levels, dealing with claims and getting them solved initially without waiting for years and years and years of a backlog and continued detriment to the injured workers.

Mr Ferguson: Thank you, Terry, Marnie, for appearing today. I have one question and I am wondering if you could answer it for me. As you well know, the government has received a number of submissions on this issue. We've received a number of recommendations. In fact, even the opposition parties have recommended that the government take certain action.

For example, they are suggesting we are not going far enough. The Liberals have recommended that we apply the Friedland formula to everyone, all past and present claims, including those who receive a 100% pension. The Conservatives, on the other hand, have suggested that we ought to be reducing the benefit level from 90% of net earnings down to 80% and that we ought to be looking at putting in a 72-hour waiting period from the time of the accident until the time one would be eligible to receive benefits. I am wondering if you could tell me whether or not, and whether you have any personal examples of the hardship and despair that would cause to your individual members.

Ms Niemi: I guess I can answer that. I recognize that within our climate of fiscal responsibility and deficit reduction, particularly with regard to government apparatus, there is a definite trend in attempting to reduce benefit levels and cutting costs at all stakes. We don't feel at Local 793 that reducing benefit levels is indeed the answer. It's certainly not within the scope of legislation which is intended to be remedial, which is meant and intended to redress injuries done. It's not the intent of the legislation to further penalize and further injure workers.

I recognize that the idea behind Friedland has been

duly negotiated by the Premier's Labour-Management Advisory Committee, and while Local 793 does not approve of this, we recognize that it was duly negotiated through a collective bargaining process, in that sort of a manner.

We don't feel, obviously, that it is the answer. If we anticipate better prevention and quicker return-to-work programs, we anticipate that these would be a much more effective solution than the overall reduction of benefits.

Mr Ferguson: I want to thank you for your balanced and rational submission to the committee.

Mr Offer: I too would like to thank you for the balanced and rational submission, notwithstanding the fact that some questions are less than balanced—

Mr Klopp: Well, don't ask any.

Mr Offer: —such as Hansard will show the previous one.

I'd like to ask you about the ratings assessment. We have heard many presentations that the current ratings situation based on results is one that is in the best interests of workers and is in the best interests of reducing accidents in the workplace. We've heard that from a number of people. In fact, what we have heard is that if there's anything that's working well under the current act, it's the ratings situation, the thing that the government is seeking to change. I'd like to get your thoughts as to whether a ratings system based on results is not one which is in keeping with the best interests of workers in this province.

Ms Niemi: We agree that the experience and merit rating programs currently in use by the board are, in principle, effective in that they address issues of prevention. However, within our local, in terms of cases I've personally handled, there's such rife abuse of the experience rating. As we indicated in our brief to you, the instances where employers have encouraged their workers not to file compensation and to merely, "That's okay. Take a break. Sit in the kitchen. You don't have to work. Just read the newspaper and we'll pay your wages"—that happens a lot more than we would like to admit.

Unfortunately, as a result of that, the statistics are not totally accurate or honest or representative of accidents actually happening within the industry. As a result of that, we feel that the legislation, the way it's worded in these amendments, is very effective in that it looks beyond numbers, numbers which can be very easily manipulated, as we're seeing. As a result, we feel that the inclusion of health and safety programs, employer cooperation in expedient return-to-work programs and employer cooperation in vocational rehabilitation services is a very balanced way of approaching a very problematic area at this time.

The Vice-Chair: Thank you very much, Mr Offer. I thank the International Union of Operating Engineers, Local 793, for their presentation this afternoon.

Seeing no further business, this committee stands adjourned until 8:30 am in Sault Ste Marie.

The committee adjourned at 1528.

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Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Conway

Winninger, David (London South/-Sud ND) for Mr Waters

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan

Clerk / Greffière: Manikel, Tannis

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Journal des débats (Hansard)

Mercredi 31 août 1994

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

Workers' Compensation and
Occupational Health and Safety
Amendment Act, 1994

Loi de 1994 modifiant la Loi
sur les accidents du travail
et la Loi sur la santé
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Wednesday 31 August 1994

Mercredi 31 août 1994

The committee met at 0836 in the Algoma's Water Tower Inn, Sault Ste Marie.

WORKERS' COMPENSATION AND
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SUR LES ACCIDENTS DU TRAVAIL
ET LA LOI SUR LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

The Vice-Chair (Mr Mike Cooper): I'd like to call this meeting of the standing committee on resources development to order. Today we'll be continuing with our public hearings on Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act.

UNITED TRANSPORTATION UNION-CANADA,
LOCAL 885

The Vice-Chair: I'd like to call forward our first presenters, from the United Transportation Union-Canada. Good morning and welcome to the committee. Just a reminder, you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat briefer to allow time for questions and comments from each of the caucuses. Could you please identify yourself for the record and then proceed.

Mr Sam Piraino: My name is Sam Piraino. I'm a member of the United Transportation Union. I'm a legislative representative and I work at Sault Ste Marie Transit Commission. With me is Joseph Bertrand, general chairman for the United Transportation Union and he works at Sault Ste Marie Transit Commission. Ray Roffey works at the Algoma Central Railway and he's a member of the United Transportation Union.

The United Transportation Union is an international union which represents rail and bus workers in Canada and the United States. Local 885 has both rail members, Algoma Central Railway, and bus members, Sault Ste Marie Transit Commission.

While I represent on a local basis both rail and bus members, I will confine my remarks on the bill to say that in general terms Local 885 appreciates that Bill 165 was the result of a set of negotiations and, while it is not perfect, we do support it.

Our union has seen fit to establish an office in Ontario which deals almost exclusively with workers' compensation, and I have worked closely with that office on behalf of members of this local. Appeals are handled by our Hamilton office. Our involvement with the WCB is not as broad as some other union locals because our union has chosen to specialize in doing appeals and policy concerns from that office. As a local, however, we do see the same concerns coming up again and again. Those areas are medical attention and the aftermath and returning injured workers to work in a timely manner.

A worker, a member of my local, will get injured, go to the doctor and be legitimately in pain, be prescribed medication most often as not, told to rest for a few days and come back and see the doctor and then be told either to return to work or to stay off longer.

The doctor becomes the advocate of the worker and in a city the size of Sault Ste Marie, which has a limited number of doctors, it doesn't take long to figure out which doctors are sympathetic to workers or employers, and they then are used to an advantage by both workers and employers. We have had members who changed doctors because the doctor would not support the patient to the extent that the worker has wanted the doctor to do so. We recognize that the doctor is being put in an untenable position.

Some workers will shop for a doctor and some employers will steer workers to doctors who show favour to the employers' position or who work for the employers directly, such as the company doctor.

The end result is that no one is satisfied. The worker feels cheated, the employer believes that the worker and the doctor are conspiring against the employer and the doctor feels used by all concerned.

Bill 165 addresses part of that concern in that there will be a prescribed form that the doctor will complete according to sections 51 and 63 of the bill. We are confident that the doctor will be able to complete the prescribed form with some confidence if the form does not contain diagnostic medical information and does not contain information as to whether the worker can or cannot work.

That decision should be made by the workplace parties. We have a committee in place at transit to make those decisions. What we need to fit people into an early return-to-work program are the restrictions and the functional limitations that the doctor places on his or her patient, not an opinion as to whether the worker can or cannot do a particular job. We feel that we have the

expertise to find jobs for our injured workers and in the end that will be the measure of success of any early return-to-work program.

Therefore, we recommend that subsection 51(2) be worded in such a way that the only information provided on the form be the restrictions placed on the worker and the functional limitations, if any.

If the employer does not have a return-to-work program developed and approved in conjunction with the board, they should not be entitled to any information that is contemplated by section 51 of Bill 165.

As a legislative representative for Local 885 of the United Transportation Union, I have, as noted earlier in this submission, rail and bus members. I deal with the WCB for both groups. Mr Bertrand negotiates collective agreements for our bus members with the transit commission.

The rail members of Algoma Central do not have a return-to-work program. As a result, we have to deal with the railway on an individual case-by-case basis to return injured workers to modified work. With some, there is work. For others, there is no work and we must deal through the vocational rehabilitation department at the WCB. The return to work is often prolonged for rail members.

Attached as an appendix is the employee rehabilitation program for the city of Sault Ste Marie. Our union participates in this program and you will note that it is a joint union and management committee with participation by the WCB as needed. The WCB in Sault Ste Marie participated in the development of the program and the participants are the United Transportation Union, CUPE, the United Steelworkers of America, firefighters and police associations.

The intent of the program is outlined at page 3 of the document. It is designed for early intervention, accommodation and modification of work and workplace for retraining and short-term placement. In some instances, full wages are paid; in others, top-up is paid. The work is meaningful and it is work that is performed in a familiar setting. The committee meets monthly and reviews the status of employees who are participating in the program. It deals with situations that are the result of both work and non-work-related situations. We believe that the program developed jointly with the assistance of the WCB is worthy of continuing and worthy of promoting as an example of the kind of workplace cooperation that is needed to return injured workers to meaningful work earlier.

Thank you for allowing us to appear before the committee.

The Vice-Chair: We have about four minutes for each caucus.

Mr Steven W. Mahoney (Mississauga West): Can you in some detail explain the statement, "In some instances," the program that you described on page 3 of your presentation—thank you, by the way, for the presentation—you say, "full wages are paid and in other situations top-up is paid." What do you mean?

Mr Piraino: Normally, the full wages are paid, but

sometimes we've had some disputes about night shift premiums, Sunday premiums and we've gone to the board and asked for top-ups on that.

Mr Mahoney: You've gone to the board, so it's not the employer that's topping up.

Mr Piraino: No.

Mr Mahoney: I know Mr Offer has a question, but the issue of medical attention—we had a presentation yesterday in London from a medical doctor from the University of Western Ontario that was quite extensive about dealing with the process around medical practitioners. The problem you have identified as well is very real, where very often the physician is a family physician, doesn't want to get into a dispute with the worker and doesn't want to deny what the worker is saying and certainly doesn't want to be the referee who's going to decide when the worker is ready to return to work. It's just a conflict right off the bat.

The suggestion the doctor made in London went much further than what you're suggesting. He recommended two things: one was to demedicalize the information; take the information around a worker and deal strictly with the injury—non-diagnostic, stay away from a medical report as such and deal with an injury report or a wellness report, if you will. He also suggested setting up a referee roster of doctors who are specifically trained in the area of health and safety and return to work, modified work, all of those kinds of things, and having these individuals in essence become the adjudicators of when that person is ready to go back to work. It goes much further than this bill goes. In my respectful submission this bill doesn't do anything with regard to the medical situation, save and except make information available with the consent of the worker.

Would you agree with that kind of a system, with a referee of doctors to make those decisions?

Mr Piraino: No, I wouldn't agree with that type of a system because, in our situation, the city has physiotherapists on contract. In our agreement, we've left the situation that the worker always has the choice of which therapist he'd like to see. He doesn't have to see the contracted therapist; it's always his choice of any physician he wants to see. We won't take that right away from him.

Mr Steven Offer (Mississauga North): Thank you very much for your presentation. I too want to deal with the issues around subsection 51(2) and section 63. Mr Mahoney has indicated we have heard previous submissions which deal with the demedicalization of information; in other words, a report by a doctor at the worker's consent which basically is not a medical type of report, but some other form of a report. I am wondering if you have any thoughts on that aspect.

Secondly, recognizing that time is running out, how is it that doctors would be able to in fact prepare a report which is anything other than a medical report as prescribed and protected through the Ontario Medical Association? Are we really talking about something which is possible or something we're going to eventually hit the wall on?

Mr Piraino: I know it's possible, because we have a form at Sault Ste Marie Transit which—all the doctor puts on it is the limitations and the restrictions of that particular work and then we, as a joint committee, sit down and try to modify the job or find light-duty work for that particular worker with those restrictions. That's all the doctor gives us.

0850

Mr Gary Carr (Oakville South): Thank you very much for your presentation. I was also interested in your program that you talk about on page 3. In flipping through, when you get into some of the details of the mission statement and so on, on page 1 of the actual introduction, I guess it is, you talk about some of the side-effects and you talk about some things I agree with—employee is the most important asset of the corporation and so on. Some of the side-effects you talk about—it saves money, then you talk about budgets, taxpayers and the workers' compensation cost. Do you have any hard data on your program here, how much you've been able to save as a result of the program?

Mr Piraino: Definitely. Last year, our WCB costs were roughly in the area of \$1.2 million for the city of Sault Ste Marie. With this program and a good health and safety committee, we've reduced our costs by a quarter.

Mr Carr: As you know, having dealt with the WCB—you mentioned in great detail that you've had good experience with it. I think, as you know, employees, employers, MPPs who deal with it—sometimes we can deal with WCB cases up to 60% of the time when an MPP's office is dealing with it—everybody on all sides of the issue has been frustrated with it and it hasn't been any one particular problem. It's one of the toughest bureaucracies to deal with. You can't point any fingers at whose fault it is, it just has evolved that way. I think everybody agrees on that; there's a problem that needs to be fixed.

If this bill is passed as is, do you think we can sit here a few years from now or a year from now and say that things are going to actually get better in terms of dealing with WCB? Do you really, honestly, truly think that if we pass this we're going to see some major improvements? Because quite frankly, every time we've done something, it just seems to be getting worse. Do you think we're going to see an improvement and in what way? Just as a broad overview, will you see it improve?

Mr Piraino: I can only speak from personal experience and we are doing what Bill 165 sets out to do in our own workplace and we have already seen improvements. We have fewer injured workers. We have an injured worker who collects a 15% disability pension on her back and she came to me one day—she's driving a bus; she's back at her regular employment. She said to me: "Listen, I'm having problems with my back. Can you do something?" I talked to the coordinator, the program manager, and we discussed it and we put her on a light-duty job for three weeks and then brought her back into her regular employment again. So it does work, or else that worker, without that light-duty position, would have been off.

The Vice-Chair: Half a minute.

Mr Carr: The program was set up; who was involved in doing it? You mentioned WCB was a little bit involved. Who took the initiative to get the program going? What I'm asking is, how can it be done in other areas? Who took the lead on it?

Mr Piraino: I'd have to say it was a joint venture between ourselves, the United Transportation Union and WCB; all three of us initiated the program and we wanted to get involved in it. Bill 162 was pretty well the leadoff to get involved in this program.

Mr Tony Martin (Sault Ste Marie): I want to first of all thank the committee for taking time to come to Sault Ste Marie and to hear the voice of our community re this very important subject and to welcome you here. I hope that last night was hospitable and good for you and that today will be equally rewarding in terms of what you learn about this bill.

Mr Mahoney: Did you have to bring up last night?

Mr Martin: You weren't across the river, were you, Steve?

Mr Mahoney: No.

Mr Martin: Okay, that's good news. Anyway, to the presenters, it's good that you came forward. I appreciate your support for the bill. Certainly, a central tenet of the bill is this effort to try and get more people back to work, because the WCB is about helping people who are hurt and in most instances trying to get them back to work as quickly as possible. This legislation goes a distance in that direction.

You've outlined a process in your case which is working, that is of that tenor. Could you maybe explain to us a bit further—you've shown us the good points. What have been some of the obstacles, some of the challenges, and how has your employer been in this whole process? Has it been a totally cooperative venture or have there been some difficulties that they've experienced?

Mr Piraino: Our employer has been cooperative. But that doesn't mean that disputes don't arise; we do have disputes over particular cases. Then we ask WCB to help us out in those disputes. But we usually come to a resolution. There are going to be disputes, but for the most part the program works great.

Mr Martin: Are there any particular disputes that come up consistently?

Mr Piraino: No.

Mr Derek Fletcher (Guelph): One thing I read that was very interesting to me was, "Local 885 appreciates that Bill 165 was the result of a set of negotiations." I think that's something that a lot of people are forgetting, that it was a set of negotiations by business, labour and all the stakeholders who were involved in the drafting of this bill and the principles of this bill.

One thing I was wondering is, as far as Gord Wilson saying yesterday that it mirrors what this committee negotiated is concerned—in London he was saying that—do you feel that because it was a negotiated set of principles this is something you can live with?

Mr Piraino: Yes.

Mr Fletcher: A simple "yes." Oh good.

As far as doctors are concerned, do you think perhaps the family doctor, the family physician should be involved as far as whether or not a worker should be able to return to work is concerned, what is suitable work?

Mr Piraino: The family physician doesn't usually know what the work is and what the work entails. What we have in our workplace is a physical demands analysis, exactly what the job entails—everything from sitting to standing, to how long you do it and how long you use your fingers, every aspect of the work site itself. The doctor doesn't have that ability.

Mr Fletcher: You're looking for a workplace committee that would—

Mr Piraino: Our committee does that. He gives us the limitations and then we set the job for those limitations.

The Vice-Chair: On behalf of this committee, I'd like to thank the United Transportation Union-Canada for its presentation this morning.

EMPLOYERS' ADVOCACY COUNCIL, NORTHWESTERN ONTARIO CHAPTER

The Vice-Chair: I'd like to call forward our next presenters, from the northwestern Ontario Employers' Advocacy Council. Good morning and welcome to the committee. Just a reminder that you will be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat brief, which will allow time for questions and comments. Could you please identify yourself for the record and then proceed.

Ms Bev Valvasori: I'm Bev Valvasori. I am the chairperson for the northwestern Ontario Employers' Advocacy Council, based in Thunder Bay.

Good morning, ladies and gentlemen, and members of the standing committee. I would like to thank you for providing the northwestern Ontario chapter of the Employers' Advocacy Council with the opportunity to express our concerns with Bill 165.

My name is Bev Valvasori. I'm a registered nurse and I'm also an occupational health nurse, claims and case manager for Saskatchewan Wheat Pool in Thunder Bay. I work with compensation claims every day, evening and weekends. I do everything from the form 0007 right up to WCAT appeals and I've been doing it for the past 17 years. I've worked in hospitals and the forest industry in the same capacity as well and I'm also a trained safety officer. In short, I have hands-on experience.

In the past 17 years I've seen a lot of changes to compensation and health and safety. Some of it has been good, some of it has been bad, but Bill 165 has got to be the worst I've ever seen yet.

The Employers' Advocacy Council, or EAC for short, is a non-profit volunteer organization of employers across Ontario. With over 1,700 members throughout Ontario, EAC represents a broad cross-section of Ontario's diverse economy. Our members include small business owners as well as large multinational organizations. We are also supported by many public sector employers and employers from schedule 2.

0900

All of these employers have come together under the membership of EAC because of a common problem that we share: frustration and lack of confidence in Ontario's workers' compensation system. The employers generally hold the view that the system must be continued, but they are not happy dealing with the current form, nor are they encouraged by proposals in the proposed Bill 165.

Since 1985 the EAC has been representing the views and concerns of the employer community, calling for constructive reform of the workers' compensation system. During this time we have strived to develop solutions and/or alternatives that are both constructive and achievable. Active participation on all the advisory groups and committees established by the WCB and the government on workers' compensation issues has been a norm. We are deeply concerned that although the business community has expended thousands of hours to develop constructive solutions to the major problems that exist in the system, the government has failed to respond to those recommendations and has failed to honour the accord between business and labour in March 1994.

The EAC was an active member of the business caucus that reached the accord with labour representatives. The proposal for workers' compensation reform developed through the Premier's Labour-Management Advisory Committee, or PLMAC for short, and presented to the government in November 1993 has been all but ignored.

The EAC does not support Bill 165, which we view to be a breach of faith by the government in not honouring the accord. We fully endorse the submission made to this committee by the business steering committee opposing the bill. Bill 165 is not a product of the bipartite group that the government asked for and received advice from.

This bill does not address the fiscal crisis of the system, nor the lack of financial responsibility or accountability. Bill 165 does not even come close to restoring the lack of confidence that all stakeholders have with the system. If anything, it will only increase the confrontational situation we find ourselves dealing with on a daily basis.

Our EAC chapter in Thunder Bay represents northwestern Ontario. It was established in March of this year as the result of employers' increasing discontent when dealing with the WCB on various concerns. We started with 13 employers. This number has now escalated to 53 in five months and includes both small employers and multinational employers. This should indicate to you the amount of frustration employers are starting to show and that they are willing to try and deal with this frustration on a united front.

When we first heard about this standing committee, we were most encouraged. When we found out that the committee would not be coming to Thunder Bay, we were astounded. The Liberal round table discussion initially had the same agenda as this committee but was finally convinced that a meeting in Thunder Bay would be to its advantage, not only politically but also informatively.

Those of us in northwestern Ontario would like to

inform our eastern counterparts that Ontario's western border does not stop at Barrie or Sault Ste Marie. In fact, this committee has actually prevented many employers and injured workers from northwestern Ontario from having a chance to express their views on this bill by not including Thunder Bay on your agenda.

Thunder Bay is hosting the 1995 Nordic world ski championships from March 9 to 19, 1995, with 800 athletes, coaches and trainers attending from 40 countries, and 500 international media. I'm sure that if we can accommodate this type of event, the standing committee would have been made to feel most welcome if we had been included on your agenda.

The average assessment rate for 1994 in Ontario is \$3.01 per \$100 of payroll. However, the increases experienced at individual firm levels usually have been fairly substantive. I'm going to talk about the grain industry and I'm going to compare it between Ontario and BC. Our assessment rate in Ontario is \$6.85 per \$100 of payroll; in British Columbia it is \$3.02. A payment to an injured worker in Ontario is 90% of the net; in BC it is 75% of the net.

I work in the grain industry in Thunder Bay and I'm sure that you're all aware of the decline in volumes of grain that have been shipped through this port and the devastating effect it has had on our employees and the community. There are two factors that have contributed to the decline. First of all, the sales have been increasing off the west coast. Second is the cost of shipping grain through the seaway.

One of the costs that's leading to the uncompetitiveness of the eastern route is Ontario's workers' compensation. The cost paid for workers' compensation is built into our costs, municipal taxes and throughout the seaway system in Ontario. We have a facility on the west coast, and their workers' compensation assessment rate, as said before, is \$3.02 for 1994. Our rate in Thunder Bay is \$6.85. Our accident rate has gone way down, but our assessment rates continue to grow.

This rate is far higher than our competition's on the west coast. You may think that we have more accidents, but our frequency rate for the grain industry in Thunder Bay has been consistently one third of the frequency on the west coast. Every industry in Ontario is faced with higher workers' compensation costs, and in many cases significantly higher costs than other provinces.

The purpose clause contained in the accord would not require WCB adjudicators to consider if the decisions being made were financially responsible, as Bill 165 is suggesting. The intent of the financial responsibility was to impose accountability across all levels of the system, and this was in the accord. Government should be ultimately accountable for all aspects of the system.

The board of directors should be accountable in developing policy direction which would be consistent with the act. WCAT and WCB management should be accountable for administering the system and implementing the decisions and policies of the board of directors. The purpose clause in Bill 165 does not reflect that intent, as some people are suggesting.

The provincial body of EAC has already submitted a full presentation on this, but I would like to add that as this bill stands, it does not appear that costs will be taken into account when new provisions and/or policies are considered by the government or the Workers' Compensation Board. I would like to ask, who will be ultimately responsible for these costs? The employers?

The additional benefit for older workers in receipt of a subsection 147(4) supplement was to be paid as an addition to the supplement and therefore only until age 65. The original intent of Bill 162, introduced in 1990, was to provide older workers who were no longer able to participate in the workforce with financial assistance until statutory federal benefits such as old age security became available. Bill 165, by proposing to pay the additional benefits as an arbitrary lifetime amount, is inconsistent with the original intent and inequitable to many workers who have serious injuries but were motivated enough to return to work. Pensions under pre-Bill 162 claims were intended to recognize both non-economic and economic loss. Bill 165 will distort the fairness of those awards.

The current experience rating system has been one of the most positive influences on the reduction of accident frequency in Ontario. We are deeply concerned that the assessment of this program will be delegated to the Workplace Health and Safety Agency to develop accreditation and enforcement. At the present time, this agency does not have influence under federal jurisdiction. Experience rating programs must be maintained as programs that measure and reward real results.

Under the proposals of Bill 165, vocational rehabilitation case workers, whose intended objective is to rehabilitate workers, will be expected to enforce the act. The case worker will be required to determine whether or not the employer has fulfilled their re-employment obligation. This will lead to conflict and adversity between employers and the case worker. Instead of assisting employers and workers in the return-to-work process, the case worker will become an adversarial figure, which can only lead to further frustration and conflict.

0910

The penalties proposed for employers who do not participate in WCB vocational rehabilitation programs cannot be considered to be a positive incentive. When one speaks of penalties, one naturally assumes that a wrong has been committed. This is real life. Some businesses are too small to even consider bringing an injured worker back to work, even if they wanted to. Some workers cannot return to work because of the severity of their injury. The current section 54 has already led to many confrontational situations both for workers and employers.

The proposal also suggests that return-to-work information is considered to be confidential medical information. The information pertains to the level of impairment, job readiness and physical capabilities. How can a statement such as "No lifting over 10 pounds" be considered confidential? How can an injured worker be returned to a potential job without this information? Without access to such information, an employer will be unable to safely and expeditiously return an injured worker to work.

Many employers have been unjustly charged for such things as back injuries. If they do not have access to medical information for such things as appeal hearings, which has been suggested, how will they be able to know that the back problem the injured worker is suffering from is not the result of a work-related injury but actually the result of a pre-existing condition that has suddenly flared up and is in no way related to a work injury? They won't.

If this dealing with facts is taken away from the employer, there will not be a just decision made. WCB will no longer be a fair system and will lose its credibility entirely. Requiring workers' consent can only lead to yet another confrontational situation, and we have enough of them already.

The major problem with the system, to me, has been the lack of leadership and accountability for both the management within the organization and the board of directors of the organization over the years. These individuals can blame the legislation for the current state of the board, but clearly they should have been coming forward with suggested changes to legislation years ago. It did not get to be such a mess overnight; it took many, many years.

Even now, with the board being basically bankrupt, we are faced with another bill which can only lead to further chaos and an increase to our rates. Unless a more realistic approach can be taken by the individuals in government, workers' compensation and other organizations, then the system will continue to decline and eventually fail or have to be bailed out by the citizens of this province.

My recommendation to this discussion is that the board must be taken out of the political arena. It must be run like a business, with individuals being held accountable and responsible for the success of the organization, to ensure that when an employee is injured he or she receives benefits. This bill should be withdrawn.

We are going to have to face a royal commission in the near future and we're going to have to pay for that. If such is the case, this bill and any future ones can wait until after the royal commission report is in. At the same time, I strongly urge you to consider that a neutral chair be appointed to this role.

We've had nothing but roadblocks from the board over the years. I call it the highway of good intentions and bad decisions. Quite frankly, Bill 165 is another bad decision. Thank you.

The Vice-Chair: Thank you. We have time for about one minute each.

Mr David Johnson (Don Mills): I'd certainly like to thank you for your deputation and injecting a note of reality into the proceedings today. You talk about fiscal reality, and I think that's very appropriate. You didn't talk about the unfunded liability, I guess, in totality until the very end, but I think that's most appropriate.

I just wondered if you could tell us the possible impact of what we're seeing here on your industry. I note that on page 3 you talk about the assessment rate being greater in the province of Ontario than it is in British Columbia. I think at some point this is going to translate into jobs

lost in the province of Ontario. I wonder if you could tell us how you see that unfolding.

Ms Valvasori: Personally, if I were an employer moving into Ontario right now, one of the things I would be looking at is the assessment rate cost. How much is it going to cost me per \$100 of payroll? If I was moving a business in, I think that would be a very strong point.

As to businesses moving out, I know businesses have closed down because of compensation issues and cost of compensation. One claim could put a small businessman right out of business, yet on the other hand, whether or not it's going to get any worse, it's hard to say. I'd really like to see the cost come down. I think it could make a real big difference. If we pay out more on one end, something at the other end loses.

Ms Sharon Murdock (Sudbury): Thank you for appearing. You're right that it didn't get to be such a mess overnight, and it took many years, but I must admit the Elie Martels of this world certainly made many suggestions to the Conservative government for those years that they were in. The changes that were made were not made, and likewise with the Liberals.

I want to go to the return-to-work section. When I read your second paragraph, "How can a statement such as 'no lifting over 10 pounds' be considered confidential information?" and I wrote "limit it to restrictions," I thought you were agreeing to that until I read the next paragraph. And so there's a contradiction, I think, that if the employer requires the information you're saying in the third paragraph there about the condition and whether or not it's a pre-existing condition and all of that information, that goes beyond limitations. I'm wondering if you could comment.

Ms Valvasori: It depends on a particular case, quite honestly. It's very hard to give a broad-based answer to that because each case is quite individual. Some cases you do need more in-depth information in order to place an injured worker into a job where he's not going to cause further problems for himself, or for another worker, quite frankly.

Yes, sometimes we do need that additional information, and quite honestly, the way our business goes about it, we get the access from the individual worker himself. We sit down. We talk to the injured worker. We tell him why. He usually has the union representative with him, 99.9% of the time. We try to work together so that we can get him back to a job which is going to be to his advantage as well as to ours.

Mr Mahoney: Government members continue to try to perpetrate the fraud that there was some kind of agreement that was entered into and led to the drafting of this legislation, the agreement with the PLMAC. We heard the reference by Mr Wilson yesterday, who used the term that this legislation "mirrors" the agreement entered into at the PLMAC.

Are you aware of a letter dated April 21 by the Premier of Ontario, Bob Rae, to Jim Yarrow, chairman of the ECWC, in which the Premier says, "A 'purpose clause' will be added to the Workers' Compensation Act which will ensure that the WCB provides its services in

a context of financial responsibility"? The Premier not only personally signed this, but just to prove that he really did look at the letter before he signed it, he wrote a little note on the back, a personalized, handwritten scrawl to Mr Yarrow about the fact that he underestimated the significance of the changes to the pension. So he made a commitment on April 21 to include financial responsibility, and that's only one aspect of this legislation and this problem, only one aspect of the PLMAC agreement.

The Premier put it in writing, made the commitment. He has broken that promise, and yet we have government members and the guy who really advises the government, Mr Gord Wilson, stating publicly that this legislation "mirrors" that agreement. Are you aware of that letter and do you have any comments?

Ms Valvasori: No, I'm not aware of that letter.

Mr Mahoney: Would you like a copy?

Ms Valvasori: Financial responsibility, definitely, but where's the accountability? I would really like to see accountability in there as well.

The Vice-Chair: On behalf of this committee, I'd like to thank the Northwestern Ontario Employers' Advocacy Council for giving us their presentation this morning.

0920

THUNDER BAY AND DISTRICT INJURED WORKERS SUPPORT GROUP

The Vice-Chair: I'd like to call forward our next presenters, from Thunder Bay and District Injured Workers Support Group. Good morning and welcome to the committee. Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd leave a little time for questions and comments. As soon as you're comfortable, could you please identify yourself for the record and then proceed.

Mr Steve Mantis: My name is Steve Mantis. I'm the vice-president of the Thunder Bay and District Injured Workers Support Group. With me is Francis Bell, one of our members and presently the coordinator of our injured workers' resource centre in Thunder Bay. Mr Bell also wears another hat, which is a private business, and he had signed up for standing in front of the committee, was on the waiting list, and was unable to obtain a slot. We were hoping he would have some time today as well.

That leads me into our disappointment that the committee decided not to travel to Thunder Bay. Thunder Bay has always been the centre of northwestern Ontario and has had a keen interest in the issues of workers' compensation. We've had many members of our organization phoning the resource centre asking for more information: Can they be at the hearings? We're sorry that they had to be denied that opportunity. I would like to thank you, though, for the opportunity of allowing us to travel here to Sault Ste Marie and present before you today.

The Thunder Bay and District Injured Workers Support Group was founded in 1984 in response to then pending legislation, Bill 101. We have pretty close to 500 members right now in the organization. We're democratically

controlled, and our purpose is, as laid out in our brief, to support and educate injured workers.

I'd like to start with, as well, a little bit of background on how we came up with our position. We got copies of Bill 165. Our board of directors met with other interested members in the community on I believe it was five occasions. We put in five evenings that were usually from 7 o'clock until 10:30 or 11 o'clock at night, and we went through the bill clause by clause, debating, arguing, sending people back for more information. So our official positions are in Appendix A, and they come with considerable debate and interest from 14 or 15 people. This is not one person; this is considerable debate with people: lawyers, injured workers and union representatives.

I'd like to start with a few comments on the unfunded liability. This is what this bill is in response to. We've been hearing about this for a couple of years in some great amount of hoopla, and most people go: "Unfunded liability, \$11 billion. They're in debt \$11 billion, just like the government. Isn't this incredible?" But most people don't understand it's not a debt. The WCB does not borrow money from anybody. They do not pay interest, as would take place in a normal situation. As a matter of fact, the WCB has some \$7 billion sitting in the bank that it collects, averaging \$400 million to \$450 million in interest. That's not a debt to me. I don't know how you would feel, but I wouldn't consider myself in debt if I had that kind of money coming in on a regular basis.

We talk about financial accountability. All in favour. Financial accountability, from a business point of view, is that you have a balanced budget. That means that the income coming in and the income going out balance, and the legislation gives you your parameters and that directs your activity. You've got to be financially responsible; you make sure in and out balance.

Well, the act says you compensate people who are hurt or have a disease at work. Now, do it in a financially responsible manner. If you drive the organization in such a way that you say, "We can't afford to pay it," I'm not sure that's financially responsible. The legislation sets out your responsibility. It says the employer will pay assessments to pay it now; let's be financially accountable and responsible. That does not mean that if someone says they can't pay you, you believe them. I'm sorry.

The official position of the Thunder Bay Injured Workers is opposition to this bill. It came through great debate, as I said. We're talking about people who would be eligible, if this bill is passed, to receive that \$200 a month. They said, "If it's a tradeoff between me getting the \$200 and other people losing benefits and going into poverty, the answer is no." When you've got a person who's on welfare and says, "I will decide not to take that \$200 so that my brothers and sisters are not hurt down the road," that person is making a significant sacrifice. I don't know if anyone's experienced that kind of lifestyle.

The situation that we have for workers' compensation is that those people who end up with a permanent disability is where the system fails. This is a small percentage of the total people who register those claims. Those 400,000 or 500,000 claims a year boil down to maybe 10,000 permanent injuries or disabilities, and these

are the people who are our members. These are the people who don't get better and all of a sudden can just go back to work again.

If you have a permanent disability, you have to find ways to adapt and to hopefully get back to work or begin a new life. These are the people who traditionally have been ending up with very small pensions, and legislation for the last 10 years has tried to address the problem. Bill 101 tried to do something. Bill 81 tried to help out with the indexing. Bill 162 said, "Yes, we recognize and we're going to give you the older workers' supplement." Bill 165 says, "Yes, we recognize this and we're going to give you another \$200." This is the group of men and women who have suffered and continue to suffer. Our opposition to this bill is based on, in very large part, the section 148 amendments to the de-indexing that are creating that same condition.

I lost my arm 15 years ago at work, working in construction. In that last 15 years, I have seen inflation go up one and a half times. If the Friedland formula had been in place, my pension would be worth 30% less today than when I got hurt. See my arm grow back yet? Well, 30% has grown back: It's okay; it's all right.

0930

Now, I'm just a young man. I've got another 21 years until I become a senior citizen, 65. So if we go with the same rate, my pension's going to drop another third. Because I get older, my disability increases, but under Friedland, what happens? My payments get smaller and smaller and smaller. Why is that? Can you explain that to me? Can you explain why, when my disability gets worse, I get less money? If you can explain that to me, maybe we can begin to have some discussion on cutting back benefits to that group of people that is most vulnerable, that group of people who are not going to get better, who get worse.

It's a very emotional issue for me because it's something that I live day in and day out. What gets to be really disappointing is that we see solutions. There are solutions. You look at different systems. You look around the world and there are systems that work much better than ours. Those systems all have the same basic principles.

The very first principle is prevent the accident, right up at the top. That's number one. If anything gets in the way of that, you change it, because that's the most important. That's the solution that works for everybody.

What's number two? Number two is rehabilitation, and rehabilitation in a way that addresses people as human beings.

This system is so complex and so mind-boggling. An injured worker gets hurt. First of all, there's the immediate pain and the suffering and there's the doubt: "What's going to happen to me? Am I going to be able to do what I used to be able to do? Can I work? Am I going to be able to make the mortgage payment?" They're now relying on WCB, and what happens? They don't know what the heck is going on. They don't know whether they're going to get a cheque next week. They don't know if they're going to be looked after later on. They

don't know if they're going to have help with getting back to work. They don't know if they can trust these people. You think that's going to help a person who's already vulnerable?

I'll give you one example: the Weyerhaeuser company in the States, biggest forest products producer in the country. One of their employees gets hurt, ends up in the hospital. The next day, the mill manager is at the hospital, saying: "We're sorry you got hurt. We're here for you. We'll do anything we can to help you." The next day his foreman is there: "We want you back. We value your contribution to our company. We're sorry you got hurt."

Do you know how many injured workers have their employers say they're sorry, those people who are legally responsible to protect them and their safety? Not too many. But you know what Weyerhaeuser has found? Weyerhaeuser has found that its costs have gone down. They've saved \$480 million in the first five years of the program.

Appeals? Appeals blight the system. What happened with Weyerhaeuser? Their appeal rate fell; productivity picked up. What's the problem here? We've got examples that work. Why don't we do it?

Presently, rehabilitation with the Workers' Compensation Board, the primary purpose is to set benefit levels. Once that's out of the way, maybe rehab can kick in.

This is your responsibility, ladies and gentlemen. You make the laws. They're following the law. That's the way you set it up. You want a solution? Read the 1987 Minna-Majesky task force report. People from all parts of the community gave recommendations. They have, and it's quoted in our brief, recommendations on where to put rehabilitation. You put it right up front.

When the system is clearly there to help that person get better, chances are it will work. But when you have all these different competing interests and complexity, well, you all know very well the system is not working. The message has to be to everyone very clearly: The main purpose is to help this person recover. It's amazing; when you do that, it works. I work in rehabilitation myself and I see it day after day. If you're there, supportive, and you tell the truth and you give people the choices, their recovery is much faster.

The Acting Chair (Mr Daniel Waters): I just want to break in for a second. You have about five minutes.

Mr Mantis: Okay. I think we've really covered a number of the important points. There's so much to talk about and we're sorry that you only have found time for 20 minutes per presentation. We encourage you the next time around to try to spend a bit more time on these issues that are so important to workers in this province, 160,000 workers with permanent disabilities.

The Acting Chair: Thank you very much for your presentation. Mr Martin, about a minute and a half.

Mr Martin: Thank you very much for your presentation and thanks for travelling this distance. There's always a battle over where these committees will go, and we had one here locally a while back about another committee that isn't coming here. However, we've won

out in this round. We have three out of four appearing in the Sault. Anyway, I appreciate your coming.

I know, Steve, that you make the effort always to get around the province and link with your brothers and sisters in the injured worker movement, and you've come with a very credible presentation based on your own experience and the experience of your workers.

I just wanted to say that given a world where there was unlimited ability to pay for services and all of that, there are probably things that all of us would like to do and would do. I don't think there's anybody around this table who doesn't feel a high degree of compassion re the question of injured workers. I don't think there's anybody who doesn't agree, as you have stated, that the basic focus is to try to look after people, rehabilitate them if we can and get them back into the workplace so that they can become contributing members again, which is what they, in my experience of injured workers, want as well.

We feel in this bill that we've found a balance, which actually has been criticized from both sides. Sometimes, in my short experience in the Legislature over four years, that speaks to me as a position that maybe is close to being where we can afford to be at the moment.

However, I just wanted to check. I know that you know that in fact what you presented as your own case scenario, that as time goes on, you will get less benefits. I just wanted to clarify. You will get less of an increase in benefits. You will not get less than you're getting today, but the "less" you're talking about is less increase. That's correct.

Do you personally qualify for the \$200 older worker supplement, and is that enough, I guess is the question I would have. I know as well that there's a piece in here that sees, as I read it, the most vulnerable groups of injured workers and dependents continuing to receive fully indexed benefits.

The Acting Chair: Quickly, Mr Martin, please.

Mr Martin: Does that affect you in any way personally?

Mr Mantis: No, I wouldn't be entitled to the \$200. As an amputee, I am treated as well as the system treats injured workers, so personally I don't have a lot of complaints. It's those people who aren't amputees, which is 99%, who have the problems. The \$200 is a random figure, and when you have 160,000 people on permanent disability, it's tough to say \$200 is fair in all cases.

0940

Our position would be, let's take a look at the situation and if the person is unable to work and was unsuccessful at returning to work, he or she should be compensated with full wage loss. That's what this system's supposed to be. It's supposed to be a wage loss system. We're supposed to compensate people who lost income. Let's do it. Let's do it fairly. Let's do it accurately. We've got computers; it's not too hard.

Mr Mahoney: I think you just said it all right there, and I appreciate that. I know that you're committed to this system and that you've done a lot of work and continue to do a lot of work on the board and other areas.

You opened up with a comment about the unfunded

liability, and I've tried to understand why it is the lightning rod. Workers' compensation is so complex that when you try to explain it perhaps in a media press release or suggestions that you're trying to make, with all due respect, the media's eyes just glaze over as you stand there talking to them. It's so complicated that it's difficult to put in a 30-second television byte.

I think one of the reasons the unfunded liability has become a lightning rod is that people can understand an \$11-billion debt. But I also believe that it is perhaps overstated in the sense that what we really need with the unfunded liability is what they attempted to do in 1984, and that is put in place a financial plan over a long term. I mean, you don't eliminate your mortgage in a day or two or a year. You amortize it over 25 or 30 years.

I believe if we establish a system, and in fact my report recommends that we establish a system that would increase the asset side, the \$6 billion to \$7 billion that you referred to, at the same time decreasing the debt side so that ultimately you could get to—I suggest 75% is actually full funding, but if you want to go to 100% over time, that's fine. But it's got to be long range and focus more on service delivery, quickly getting people back to work. That is going to reduce the costs at the Workers' Compensation Board.

I guess I'm pontificating, but I agree with your reaction to the unfunded—

Mr Martin: Three minutes—

Mr Mahoney: Well, you're used to me doing that. In deference to the local member, I listened for five minutes.

The Acting Chair: And the hook is the same.

Mr Mahoney: And the hook is the same. I just wonder if you have any comments on that.

Mr Mantis: This is one of the really sad parts of the system. We live in a capitalist society. Some of us are happy about that, some of us aren't, but the bottom line is the dollar. The bottom line is evaluated in terms of who pays who what.

Businesses have found across North America that if they can get governments to reduce costs in workers' compensation, they get a big return on their investment. That's the bottom line. There is a campaign across North America by employers to cut benefits and they're using the unfunded liability, because it's hard to understand and because it's an \$11-billion debt, to cut benefits. That's what happening, and my real disappointment is that when any government buys into that, you know what the message is? The message is, it's cheaper now to hurt and kill workers. That's the message, and I find that shameful. It's figured out on the bottom line.

I think, bill them totally. When people realize that it costs a lot to hurt people, they're going to find ways to stop it. That's the way business works. If costs in this area get real high, you find ways to fix them. If you can find ways to keep costs down without fixing the problem, through the back door, then why not? It's capitalism, it's okay. But I find it shameful.

I think, pay the cost and people will find ways. You won't have to have experience rating. People will know: "Hey, I'm paying way too much. I'm going to make sure

that my workers are protected. I'm going to make sure that I look after them. And when they get hurt, I'm going to do the best I can to get them safe, healthy and back to work." That's an incentive.

The Acting Chair: Mr Mahoney, the hook is out. Mr Carr, please.

Mr Carr: I appreciate your comments. I wish we had an opportunity to go to Thunder Bay as well. I was there last week. The weather was beautiful and we had a great time. I was up on one of the forestry bills and we had actually a lovely time. We were there for a couple of days, so I wish we had an opportunity to go back.

I want to deal with the question of the unfunded liability as well. As you know, basically the unfunded liability is the difference between what is owed and what is coming in. You mentioned what's coming in, but what is owed is owed to your people, the injured workers.

I think what people don't realize is that if this system collapses, it isn't the employers who are going to be hurt. The people who are owed the money are the injured workers. They're on the hook for it. People say, "Well, the system will never collapse," but as we found out in the social contract, we never thought we'd see an NDP government open up contracts and roll back wages, but when the money runs out, there is no alternative.

Do the injured workers realize that if nothing is done and the system collapses, the people who will be hurt most, because there will be absolutely no money to pay them, isn't the government or the employers? Do your members realize that it's they who potentially could get nothing if the system collapses? Do they realize who's on the hook for this unfunded liability?

Mr Mantis: I think, yes, they do realize. I think when we talk about a system collapsing, there are two ways that a system could collapse: one, if the government says, "We agree that employers don't have to pay any more," and then no money comes in. That's one way.

The other way is if there was no more employment. If there was no employment, there would be no assessments, there would be no money coming in and the system would collapse. In that situation, everybody would be out of work. If we had a fully funded system and our economy totally collapsed, if we had \$18 billion in the bank and injured workers were the only ones getting paid, how long do you think that would be taking place?

We've already seen in New York state that the government has gone and said: "You've got a big pot of money. We're just going to borrow some. Trust me, I'll pay you back." Trust me, \$18 billion sitting there in cash when there are tough times is not going to be overlooked. We don't have confidence that we're going to be protected when the rest of society is falling apart, so I think the idea of the collapse of the system really is a lot of rhetoric.

The Acting Chair: I thank you, gentlemen, for appearing before the committee. I know that we'll take your concerns about the bill into consideration. It was a very eloquent presentation, and thank you once again.

Mr Mantis: I have to apologize to my colleague and ask that if there's any chance—I mean, I've got to go

back with this guy. I never let him say a word. If there's any chance you've got a little slot in here, he's ready.

The Acting Chair: Okay. Thank you.

KENORA INJURED WORKERS GROUP

The Acting Chair: I would at this point call on the Kenora Injured Workers Group. If you could take a seat at the table, and when you're ready, introduce yourself for the sake of Hansard and the members of the committee and start your presentation.

Ms Lily Bergman: Good morning. My name is Lily Bergman and I'm president of the Kenora Injured Workers Group. I wish to thank you for allowing me to come to Sault Ste Marie as a member of the provincial team seeking justice and dignity for all injured workers. Twenty minutes is not long enough to tell you personally the heck I've been through.

Incidentally, I wish to assure all of you from the south, Kenora is still part of northern Ontario. We have not become a Manitoba community. We are 35 miles from the Manitoba border so we vote, we pay provincial sales tax. We are far from Toronto, but we are still members of Ontario.

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I wish you could have come—I had to travel 800 miles yesterday, changing planes once, to get here, with a sore back.

I worked as a nurse at the Kenora hospital for over 15 years. Because of an industrial accident, I was left with a back injury. My worst fear: I had to deal with WCB. Its reputation is well known by the medical profession in the north. In an instant, my way of life changed dramatically.

I used to be a respected, proud, working single parent making car payments, shovelling snow—and we get lots of it—investing in RRSPs for my retirement years. I did all sports, including ice-skating, cross-country skiing, curling and swimming in the beautiful Lake of the Woods, and I had children to look after. Now I am labelled one of "them," an injured worker.

I had a work ethic—I become a little emotional sometimes because it's upsetting—taught to me from childhood: You get a job and you pay your way in life, no matter what. My father, now deceased, was from Sweden, the oldest of 10 children. My mother was also Swedish, one of the oldest of 15 children. They raised seven children, instilling in all of us: "Get a job. Work, work. Pay your way in life, no matter what. Be a proud, responsible worker and citizen." That's Swedish pride. Of course, the three girls became nurses and two boys became teachers and two boys became tradesmen. One of my brothers has his own construction company. We discuss WCB at great length. He's a millionaire.

I am the first family member to have been on WCB benefits. Now, if I had been in a car accident, I would have had my family doctor for my medical care and the community would probably have put on a dance to raise money to help me. But our society, and some fellow workers, look at injured workers as lazy bums who are abusing the system, especially injured workers with non-visible injuries. The Workers' Compensation Board has been known to tell an injured worker with a sore back,

"It's all in your head; you are overreacting." But of course an MRI would reveal why such pain is present. My own doctor knew I had a sore back and I felt he was quite capable of dealing with my medical problem.

While I was hospitalized for medical care for my back in our local hospital, tests revealed that I was a diabetic, to be controlled by medication. This is not a compensable drug. I have no drug plan. I wrote Blue Cross twice. I'm too expensive; I got two negative letters. Of course, with WCB it's not compensable.

After a time of medical rehab on WCB benefits, I lost my job as a nurse because I was unable to perform my nursing duties. I loved nursing. I enjoyed nursing. I wanted to retire at 65 from nursing. It was my chosen vocation as a young child. My two sisters were nurses and my two sisters-in-law were nurses.

It was a very traumatic time for me: a single parent by choice, a child in school, no medical coverage. Believe me, it was no joke. It was hell for me and my children because I didn't have enough money.

The case worker suggested retraining as a social worker. The week I was to enter school I was hospitalized for respiratory distress. My body had shut down 80%. I hadn't slept all night and I thought it would go away in the morning. By morning, from my waist down I'd already turned yellow. I couldn't walk. An ambulance came and took me to the hospital.

I was then diagnosed a severe asthmatic with a number allergies, the worst being cigarette smoke. No, I'm not a smoker. Nobody smokes at my house. This meant more non-compensable drugs—I had no drug plan—medication for almost \$300 a month plus all the equipment I had to buy. Good grief, was a I stressed.

Yes, I graduated from college. I made the dean's list. There were no jobs at the time for social workers in Kenora specifically in smoke-free environments. When I finished school, the government at that time designated all government offices as smoke-free. However, the clients, the consumers you serve, have a right to smoke, so whatever environment I applied for in Kenora where there was a job available the consumers would smoke. They have a right to smoke.

The case worker said she had a job for me in Thunder Bay, 300 miles away. My house, my children, my family, my friends, my church etc are all in Kenora. I have a child with special needs, cerebral palsy and severe brain damage who, after 15 years in the Northwestern Regional Centre—that's an institution which has since closed—had finally been deinstitutionalized and sent back to Kenora under the care of the Kenora Association for Community Living, of which I'm a founding member, in its residential program. I just could not move away and leave her alone again. I am her only advocate. Because I was not cooperating—I would not move—my benefits were cut off.

How degrading. "What do I do now?" Bills have to be paid. I need Ventolin and Azmacort and all my drugs. Everything has to be paid. The bills have to be paid whether you're making money or not. We all know that.

I had been the first of seven children to go on WCB

and now, at the age of 58, I had to go to beg for welfare. How humiliating. Let me tell you the shame I felt. It was unbearable. My parents will surely turn in their graves: one of their children on welfare. What shame for proud parents if they'd been alive. We were very poor. My family was very poor. I was quite depressed.

An injured worker down the street, an old Swede, had been working in a logging camp and suffered an industrial accident and moved back into town in a trailer. I don't think he could sign his name. He had four children. He could not become a couch potato. He couldn't stand the pain. He'd worked hard all his life. His youngest daughter came home from school one day and he'd shot himself—a proud, stubborn Swede.

I wasn't going to do that. Other injured workers have. In Ottawa, a man went before the legislative—he couldn't read. He didn't understand why he was cut off. I was there in 1990. He'd shot himself previous to that, right in the legislative building.

1000

I cried and cried. "What do I do? This is a nightmare." Finally, I approached the welfare office to beg for money. How degrading at my age. I was too ashamed to admit to anyone that I was on welfare, an injured worker on welfare, another bum. I'm glad this isn't being televised in Kenora because I kind of cringe that somebody at home will find out that I was on welfare. I play bridge with the mayor's wife, Mrs Winkler, and a few other people. They didn't know I was on welfare because I have always been a proud working single parent.

During my time of looking for a job I soon learned that employers prefer not to hire workers with back problems because they are a hazard to the workplace, and especially somebody 58 years old. When you fill out the application form they ask if you've ever been on WCB. You fill it out and say yes. Why? Back problems.

I have gone to hell and back; 20 minutes can't tell you what I went through in four years. I wish just one of you would walk in my boots for a couple of months, live on my pension with no coverage for my medication. I'd be dead without it. It's no joke. It's serious.

Sometimes I wake up in the middle of the night with such back pain that I lie there crying. I don't know how to lie; I don't know where to put my right leg. I'm fed up with pain. I'm sick of pain pills. WCB says, "Learn to live with it," and I'm trying. I could have surgery, but no doctor in his right mind would do surgery on a diabetic asthmatic, which I wasn't prior to my industrial accident. I was diagnosed later in life.

But life goes on. Making ends meet is a struggle. It never ends. But let me tell you one thing. I praise and thank God every day that I am alive and can, with His help, keep going. Jesus answers prayer. Life is so short when you hit 60. It is a good feeling for me when I can help another injured worker who does not know or understand where to turn after an industrial accident.

I'll leave a message with you. Please remember that when you are ready to make decisions affecting the injured workers of the future, it could be one of you or one of your dear friends or another single parent or a

member of your family who has an industrial accident. Thank you very much.

The Vice-Chair: Thank you. One minute each. Mr Offer.

Mr Offer: Thank you for your presentation. As you will probably be aware, as we've travelled throughout the province we've heard some very strong and moving presentations such as yours dealing with what happens in real life to injured workers. I just wanted to thank you for that.

There are two things I do want to ask. You've gone through your particular case and you've sort of left me off. I just wanted to know—you said, "Therefore my WCB benefits were cut off," because you didn't take up employment at a place that was 300 miles from where you reside. I think there isn't anyone who would think that your actions were anything other than reasonable.

What has happened since then? Have your benefits been restored? And secondly, very short, have you any comment on the Bill 165 before this committee?

Ms Bergman: I suppose my one big comment is that the \$200 a month is like a million, \$10,000 to some of you, and certainly could benefit the older injured worker like myself. From the stories I hear from injured workers at our meetings I certainly would welcome \$200 for some of them. They're living in poverty.

The Vice-Chair: Thank you. Mr Johnson.

Mr David Johnson: Ms Bergman, I would like to thank you as well. It has obviously been a very difficult circumstance for you to come before us and explain a most difficult series of events that you've gone through in your life, but I think hearing that kind of experience does give us the opportunity to learn at first hand. I certainly appreciate that.

You represent, as I understand it, the Kenora injured and disabled workers' support group. Is that correct? Could you tell us, in the minute that I've got to ask you a question, does that particular group support the bill that's before us or has it taken a position on the bill that's before us?

Ms Bergman: We support the Ontario network. We do not support Bill 165 but we would enjoy the \$200.

Mr David Johnson: You'd enjoy the \$200, but essentially your group is opposed to the bill as it stands before us.

Ms Bergman: Yes.

Mr Will Ferguson (Kitchener): Thank you very much, Ms Bergman, for appearing before the committee. You tell a very compelling story, and I think all of us empathize with your plight. What I do want to say to you is simply this. You mention the \$200 pension and how much that will mean. I think that's important for members of this committee and especially the Liberals to hear over and over again, because this government has been criticized on a number of occasions over the past week around the \$200 and around whether or not the whole compensation system can afford it.

I think you demonstrated today, in a much better way than I could ever demonstrate, how this government can't

afford not to come up with at least another \$200 a month. So on behalf of the government I simply want to say thank you.

Ms Bergman: Thank you very much.

The Vice-Chair: If I may, because of your story I would surely encourage you to participate in the royal commission that's going to be done on workers' compensation.

Ms Bergman: I'm a very, very private person. I don't share my problems with anybody except my lawyer and you. People in Kenora didn't know I was on welfare.

The Vice-Chair: On behalf of this committee, I'd like to thank you for bringing us your presentation this morning.

JOHN MURPHY

The Vice-Chair: I'd like to call forward our next presenter, an injured worker, John Murphy. Good morning and welcome to the committee. Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat briefer to allow time for questions and comments. Could you please identify yourself for the record and then proceed.

Mr John Murphy: My name is John Murphy and I'm an injured worker. I'm totally opposed to Bill 165, but I'll state why after the fact.

Mr Chairman and members of the committee, I thank you for the opportunity to address you regarding Bill 165. Proposed changes will affect not only those like myself who have been injured on the job but have the potential to affect every worker in compensable employment in the province. As such, these changes should not be hastily adopted.

1010

I have followed this committee closely and we have heard a lot from employer groups about the cost to the employer. I can understand their concerns. However, I ask the committee to consider the cost to the worker. I will use my case as an illustration of these costs although, as a volunteer workers' rep, I have seen it repeated in nearly every claim in which a worker cannot return to employment.

I worked for 42 years of my life, and to date would have worked 46 years if not for my compensable injury. In my last year of employment I earned \$29,000 in six months. Before the recurrence that forced me out of the workplace my estimated earnings would have been \$56,000, or \$4,600 a month. Today, my actual income is \$2,751, consisting of WCB pension, Canada pension disability, 147(4) benefits and an employer's pension. This leaves me with a net loss of \$1,915.05 a month. It is fortunate that my injury did not force me out of the workforce sooner. My pension would have been lower.

As I mentioned, this situation is repeated in thousands of claims across the province, with the real cost of the workers' compensation, including financial distress to the worker, marital discord, bankruptcy and related social costs. I consider myself fortunate through my years of employment. I was fortunate enough to put a little aside and now I'm not faced with the same distress that I see

on a regular basis. When I do see the distress I attempt to assist where possible.

The act, if administered as it is currently written, might indeed assist the worker. However, employer pressure has caused decision-makers to cut costs wherever possible, and I do intend for that to be interpreted as on the back of the injured worker. I and members of the medical profession to whom I have spoken are actually aware of the low-ball pensioning assessments of workers whose treating physicians advise them not to return to any modified work, of benefits being cut with no documented medical changes, of 147(4) benefits being repealed or denied solely on the basis of a worker's age—maybe this is what is referred to by the board as the older worker's supplement—the workers being denied benefits from documented syndromes directly linked to their injuries.

If an employer group succeeds in forcing this bill through, we are all going to see benefits that already do not keep pace with the cost of living being reduced to 80% indexed. In this manner, that will cause workers to fall even further behind their customary earnings with each succeeding year.

We see nothing in this bill to improve the already deplorable management of vocational rehabilitation. Instead, we see means whereby forcing the injured worker into rehabilitation before he is ready, in the treating physician's opinions, will be administered by people with no medical expertise, and this will be supported by legislation. Should not the role of the treating physician, the very issue on which most vocational rehabilitation-related appeals are being based, receive at least as much legislative mandate as the bureaucrats who examine the workers?

Future economic loss ratings, which were introduced as a result of Bill 162, are based on those vocational rehabilitation decisions and are routinely seeing situations where decision-makers are being told in writing by the treating physician and specialist that the worker cannot perform the employment selected, yet benefits are cut to reflect the difference between pre-accident earnings and those arbitrarily selected positions. I am even aware of claims where the employer's physician said the worker could not perform the occupation, yet the FEL has proceeded through R-1 ratings, confirming the decision of the voc rehab worker, which directly contradicts the employer.

Employers are now required to offer modified work for a minimum of six months, where possible, to the workers. I routinely see cases where these employers are offering them this modified work, then terminating the employment as soon as possible. Or the employers will drag the process out until two years have passed. Then they are no longer obligated to re-employ.

Every worker in Ontario should be treated equally and should receive every benefit to which he is entitled without having to proceed to lengthy appeals. Currently, in Ontario we have three classes of citizens among the injured workers: pre-1984, who are the most deprived, 1984-89 workers and those injured in 1990. A steelworker with a 10% disability in 1985 might receive \$150 a month, while a steelworker in 1989 with a 10% disability

would receive \$240 a month. A worker in 1992 receiving a 10% FEL award would receive \$400 and a NEL award of \$4,000. Should not the same degree of disability be equally compensated? This new bill will create even more inconsistency, modifying the indexing of some pensions, providing top-ups to others and continuing to deny some supplements to which their treating physicians contend they are entitled.

I mentioned my own case at the opening of my presentation. A remarkable miracle will occur in about three years. I will miraculously no longer be disabled from work, since 147(4) benefits will no longer be available to me, supplements under the CPP will not be available to me and my employer's pension will be reduced. My overall loss will approach \$1,000 monthly. Thus, instead of losing \$1,915 monthly, I will be losing \$2,915 monthly. I dare say I am losing on a scale greater than my employer, yet my employer is being heard.

I would appreciate a bit of time to make a small submission here on a case that I have permission to use.

I hear people talking about the Workers' Compensation Board, and I would like to say you've made an awful mistake by firing Mr Odoardo Di Santo. He put a project into perspective. It's an action plan which would have helped along the injured worker. However, they decided for some reason that Mr Di Santo was helping the injured workers, so they kicked him out and they put Ken Copeland in, who is not legally appointed yet but in a position of running the board.

What I want to get to is I have two letters from an employer, and these letters refer to this girl as a permanent worker. She has honesty, reliability, integrity and so on. Here's another letter of recommendation.

The employer did not know anything about the Workers' Compensation Act and I can understand that. She made her accident report out and applied immediately on the accident report for SIEF. But then she wrote a letter to an MPP in southern Simcoe county, accusing this employee of having committed fraud, laziness, dissension, theft and, "How much longer must I go on paying for this idiot?"

When I deal with the Workers' Compensation Board, I have to deal with adjudicators. I personally know Mr Odoardo Di Santo and found him to be a very reliable and dependable man. But as I say, I have to deal with adjudicators, and unless I see something wrong, I do not bother going up the line. However, this MPP saw fit to send the chairman of the board a letter saying how there were concerns with the employee, and the board reacted on it and said, "Well no, you signed an accident report and said this accident did happen," but then they had to use a director to send that letter.

I've seen it numerous times, an employee being discriminated against by corporations. I was in a labour dispute in 1990. I was on modified work, could no longer work, but being as I was in a labour dispute, they had no record whatsoever of my compensable injury or an ongoing problem. Well, they had five letters from orthopaedic specialist Dr Patrick Fyfe stating my condition had deteriorated beyond. If it had not been for the amount of money that I had in reserves and what not, I

would have wound up like a lot of injured workers: on welfare, social assistance of some kind, because it would have brought me down to that.

I feel sorry and I detest any person that speaks against a legitimately injured person. I find it atrocious for somebody to say: "This guy is faking. He's a bum." I watch it in the Legislature every day. I watch all you people. I see it all, and sometimes I think it is a comedy show.

1020

But what I want to impress on you is you cannot realize the indignation and the results of an injury to an honest, legitimate worker. Everybody is not a crook. They do not commit fraud. If medical evidence is there, it should be honoured by the board and there shouldn't be a 20-mile string to go through before you can get your compensation. I know of several cases, but I'm not going to elaborate on them now because I don't have permission to talk on them.

I'm open to any questions now.

The Vice-Chair: Thank you. Mr Carr, about two minutes each.

Mr Carr: Thank you very much for your presentation. I think as MPPs we can spend up to 60% of our days dealing with the WCB. I probably have written to the chairman of WCB more than anybody else in this job. When something comes in, whether it's from an injured worker or employer or whatever, what I simply do, I don't even make a judgement on it; I write a letter. I basically am a middleman to try to make sure that the chairman then gets involved. So the system is extremely difficult in the way we work.

The problem we've got—and I'll try to put it in a nutshell—is very simply that the revenue coming in and the revenue going out don't match up. Some will disagree why that is. Businesses can't afford to pay any more. In terms of WCB cost, they're already hit with high taxes. That isn't anybody's fault; it's probably been governments at all levels and all political stripes that have put roadblocks up to businesses because of WCB costs, the overregulation.

So the problem is that the government's challenge is, how do you deal with it? You seem to be saying that in your particular case, you need more money to live; you're a legitimate concern. The problem the government is dealing with is the amount of money right now that it's paying out doesn't equal what is coming in. The problem, as I mentioned to the other injured workers, is that the people on the hook for this at the end of the day aren't the government or the employers. The other chap said that the system isn't about to collapse and didn't believe the circumstances, but the fact of the matter is, the people who are owed the money are the injured workers.

As we go through this, do you have any comments on what I believe should be some of the solutions—and I think even the chap before mentioned that—with regard to prevention? I think the one thing that you would get agreement on from all political parties and injured workers and employers is the prevention. Do you have any suggestions to this committee as to what can be done

in terms of prevention? Because I agree with the other gentleman who said the best way to deal with it is to try to deal with the prevention issue, rather than dealing with it after the fact, when people get injured such as yourself. Do you have any comments on that?

Mr Murphy: I do have a lot of comments; I could go on for a week. But I've seen where people are trained in a job. They're work-safe. Remember, I've worked in construction in 50 degrees below zero and I've worked in heats of 150 degrees above zero. I'm not familiar with the other scale so I'm going to use that. I've seen people killed, I've seen people injured, maimed, arms ripped out, legs ripped out.

These are accidents. These people are not lunatics. They do not go out—and I can't emphasize this on you enough. I didn't go out to injure myself. What happened was the employer decided they were going to retrain us into other jobs. I never had really an injury before that. What happened was unfamiliarity. Remember how long I've worked: longer than some of you people have been alive.

I realize what goes on in industry and I see the lies and the deceptions of the employer who said, "We are trying to accommodate." You are all familiar with the new rating. My ex-employer just got \$1.4 million back from the Workers' Compensation Board for all the implementation of their program. There are still people getting hurt there, but every letter that goes out has an SIEF on it. I don't know if the guy went to the washroom and hurt himself, but there's an SIEF on it right away.

To eliminate injuries in the workplace, you have to make it safe. I would like to take some of you people—Mr Mahoney's uncle would be familiar with the mill that I worked in. You could walk no place without walking on grease. When temperatures get high, it's like walking on a skating rink. You'd better be able to skate. The injuries happen. "My God, the guy was clumsy. He was a bum. What's the matter with this SOB? He's crazy." You get down under a mill and you start working in heat and everything and you get hurt and the employer right away disputes that fact: "It didn't happen that way; you have committees set up."

Algoma Steel is doing a remarkable job right now with its improvements. However, at the same time, the injuries are still happening. I know they're unfortunate. When these injuries happen, you're talking about respectable, honest people who are suffering.

The Vice-Chair: Mr Fletcher.

Mr Fletcher: I thought Mr Martin was—

The Vice-Chair: We only have two minutes. There's only time for one.

Mr Fletcher: Thank you for your presentation and I'll leave enough time for Mr Martin. I was just going to say, I remember about 15 years ago when I first started work, I was just a young guy starting out in industry, and I lifted up some stuff the wrong way and threw my back out. It still hurts today and there are lot of things—sometimes I wake up in the morning and it's hard to roll off the bed and things like that.

The company contested it, saying it was my fault

because I didn't lift right, but they'd never trained me for that. Is this a common occurrence in industry? From my experience, that's what I see. It's nice to talk about prevention in one breath, but let's really get into the prevention of it and get to where the crux of the problem is and that's in the training of employees and the partnerships that have to be built within the workplace. Is that the way we should be going as far as prevention?

Mr Murphy: For prevention you have education is the greatest prevention there ever is. At Algoma Steel, I hear some of the guys talking. I remember there was a lot of distress because of the company pretty near going bankrupt—well, they were bankrupt at one time and the way they're talking about the board going bankrupt. But I think a company should pay the full cost to an employee. Everybody seems to forget what the Meredith report was: It was to protect the company, not the employee.

What I'm basically saying is, when you get injured—I've noticed in hundreds of cases, if you get injured and the company interferes with the process of the WCB, immediately you're discriminated against by the WCB because the company said, "Hey, I don't want to pay these costs," and that's what happens.

People are suffering. I heard the lady just before me talking about the case of people shooting themselves. There are some people in the Brockville psychiatric institution who had minor injuries, so to speak—but what I'm saying is in the workplace itself, a man can be respected, and if the job is put into its perspective of where the employee can handle it, he goes back. I went back four times. My orthopaedic surgeon told me I should go and see a psychiatrist because anybody with three damaged discs in their back shouldn't be working in heavy industry.

Unfortunately, I had to retire. I couldn't stay any more. But as I say, I'm a lot more fortunate than the injured workers who had the \$400-a-month pension and the \$147 supplement and they're on welfare with their families. They lost their homes and everything. I'm appalled at some of the things that I see in the cases that I handle.

Mr Mahoney: Thank you very much, John, and I appreciate your presentation. By the way, not only my uncle Jack would understand, but my dad worked there, my brother worked there and several other uncles and a long history of the Mahoney family at Algoma Steel, as you know.

Speaking of that, I toured Algoma within the last year, went through the plant, met with the health and safety officials. It's my understanding that much of the design of the health and safety training program has come out of experience at Algoma Steel; that Algoma, working cooperatively with the United Steelworkers, have developed some of the best return-to-work modified work plans, ergonomics, all of the latest stuff in WCB treatment.

You made comments with regard to employers, John, that were not very flattering—and that's fine; I appreciate where you're coming from on that—but my experience is that Algoma is part of the solution working with the Steelworkers and that they've really got a lot of the

answers that could well reform workers' compensation if only we would listen to some of them, both the management and the workers, who, of course, in this situation, are one and same, in a sense. Do you find the problem, in your particular case, is with the employer or is it with the bureaucratic mess that's been created at the Workers' Compensation Board?

Mr Murphy: That's a two-sided sword, Steve, and what I'd like to say is that I had a case a year ago at Algoma Steel. All safety and health aspects were in effect. They were taking the injured worker back to work, but the job they gave him was beyond his medical capability to perform. The man reinjured himself. He lived without benefits for five months. I tried to talk to the company, but because I was retired, they would not see me. So it was arranged at the Workers' Compensation Board. All I was trying to explain to them was, "If you've got a program in effect, why are you asking a man with no bending, twisting and turning to paint walls, climbing ladders? Why are you asking a man to carry more than he's capable of carrying now?"

1030

It's okay to invoke a safety program, but if you don't live by it—it sounds good when I take you through there. I can take you through there and you couldn't hurt yourself if you wanted to, or I can take you in there and leave you blind and you can get hurt. The size of Algoma Steel and the scope, they don't have an ergonomic. A case worker here in Sault Ste Marie with the Workers' Compensation Board says: "Yes, this man can perform. This company is obliging you. They're taking you back." But when a guy gets reinjured and he waits five months for benefits because the employer said this didn't happen—but there's that word, SIEF, again. I hear people saying, "Well, the employer's got to pay this and got to pay that." I have a little sheet here where I had to pay \$2,100 out of my own pocket to help an injured worker. But I don't charge people and I don't mind helping them out, but when I see employers saying, "Hey, buddy, I'm looking after you," and the next day the guy is reinjured again, I wonder how much he really is looking after him.

The Vice-Chair: Mr Murphy, on behalf of this committee I'd like to thank you for taking the time out this morning and giving us your presentation.

INJURED WORKERS' ADVOCATES OF SAULT STE MARIE

The Vice-Chair: I'd like to call forward our next presenters, from the Injured Workers' Advocates of Sault Ste Marie. Good morning and welcome to the committee. A reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat briefer to allow time for questions and comments. As soon as you're comfortable, could you please identify yourself and then proceed.

Mr Pat Jolin: My name is Pat Jolin. I'm president of an organization of Sault Ste Marie, the Injured Workers' Advocates. With me I have José Cormo, who is an injured worker and who has been a long-standing member of my organization. I'm also vice-president of the Ontario Network of Injured Workers Groups, representing north-eastern Ontario as a whole.

I'm here today to speak to this committee on Bill 165. Because of workplace injuries, workers with disabilities are facing serious problems which are putting them into poverty situations, as we know. Also, don't forget, because of Bill 162 as put in by the previous government, it has added dilemma to the now standing position that we're fighting with Bill 165.

As a result, over 40,000 workers on small WCB disability pensions whom the board has deemed unlikely to benefit from rehabilitation remain disqualified and/or unemployed. Thousands of workers across Ontario have had to acquire social assistance benefits in order to survive or to live. As you're aware, and I believe the committee as a whole, on all sides of government, should be aware, it has affected every injured worker or the future injured workers.

Unemployed workers with disabilities face major income reductions in WCB's deeming process, and alternate employment prospects are dim and almost impossible to get, as disabled people suffer an unemployment rate of over 40% in Canada as a whole.

Another key problem in the system is the area of health and safety. As you're aware, the current system of financial incentives and penalties, experience rating, encourages employers to challenge entitlement decisions. This is something that should be clearly looked at by all walks of government present and future. We should have this deeming process—as you know, we've been fighting for quite a while to get it eliminated and we should stand by that.

Experience rating, because they do not penalize employers for claims due to occupational diseases, discourages industrial hygiene practices. That is something else that the employers are getting away with. The past government has let them do it; the present government, much to our dissatisfaction, has let them do it. We're hoping that this committee will do something in the future so that whatever future government is in there will prevent this from happening again.

The experience rating process and programs do little to reward health and safety practices because they measure the wrong thing. What I feel is they're not penalizing employers; they're helping them by giving them rebates, major rebates to major companies, and the injured worker is being told in no uncertain terms by the employer, small or large, that if they go on WCB, disability pensions or otherwise, they will not have a job in the future.

This is something that totally should be against the better judgement and better behaviour of any government politician. They should be looking towards the injured worker, his rights and his benefits.

Administratively, the WCB is in shambles. We know that, we hear about it every day, but it's not our fault. It's the bureaucracy of the government that has been handling and controlling the WCB. It's about time something is done. Our friends in power right now—and I say our friends; I say that very openly today—the NDP, are the only ones that have in any effect supported anything for the injured workers as a whole. The past and maybe the future governments we're hoping will listen to us. We're sick and tired of being pushed around. We're being

discriminated against and it's totally unfair. So I'm hoping that this committee will do something in the future process about that.

As you know, WCB is really an insurance scheme. It's an insurance project. It's a system by which employers pay premiums into this as an exchange for being exempt from lawsuits by injured workers. The government knows this, because it was the government that put it all together in years past. It's the government that stands for it today and in the future. So therefore, if that's the way they feel, they shouldn't be on the side of the employer, they should be on the impartial side, but the injured worker should have the benefit of the doubt.

I therefore say that funding the system is not just a diversion of moneys but a direct employer obligation to the injured worker to have a retraining program, a back-to-work system that will work if at all possible, or else recommendations should be made in different directions.

Our friend Mr Bob Rae is very aware of this, as you know. He has fought for us, with us, in the past. So did other members of Parliament who are in this room today. The thing is, we are still not getting any further ahead, and this Bill 165 is just propaganda in my eyes of government issues just being placed out in the public. I don't believe it's really being adhered to.

Bill 165, in the context of the way it's written, is an employers' bill in my eyes. This is personal. I speak for my organization. I speak because I've been across the province as well. I've been attending many hearings and meetings such as this. We're just scared that the bill as it is intended today is not in the favour of the injured worker as a whole. There are too many blank spots, and, ifs or buts. In the old act at least it stated there "will" be, there "shall" be, rules and regulations set out that the employer must comply with and that the government, being part of the relationship between workers' compensation, shall contend with. In this Bill 165, it says "may" or "might" or "if."

There is nothing presidential that is a directive in the favour of being compatible towards right and wrong of the employer, and the injured workers are going to be the ones to suffer. I feel with all my heart that if this bill is passed as is, without a few modifications—we do agree with some of the situations in the bill, but as is, I believe it's just a slap in the face and it's not going to really help the injured worker.

The older pensioners who are expecting this \$200, we're getting flooded, just like all the other offices across Ontario: "Do I get it? Am I going to get it? I've been cut off 147(4). We're fighting it. It's in appeal. The technical adviser in the region has cut me off because he said I'm not complying with the board's rules." This is crap. It should be for all older injured workers, whether they are in receipt of 147(4) or not, or if they have been or if they're going to be. We are getting flooded with those calls, as I believe are most of your offices. That should be one of the major rectifying positions of this bill.

1040

The other thing with the network as a whole—as you know, we've made statements of compromising with the

Ontario Federation of Labour, with the CLC and with our MPPs, as well as with the government itself—is the Friedland formula. If that goes into effect, it's going to help the employer, it's going to help the unfunded liability, but there again it's going to deprive the lower-income injured worker who is on even maybe social assistance from surviving, and this is totally unfair.

The network's position, which I also represent and stand for, is we have taken a census right across the province of Ontario, and we ask that this committee listen to the injured workers, the different groups, the different participants, because it's very important. We are the ones who are being hurt; you are the ones who are supposed to be looking after us. We can talk all day, we can talk all month, all year. It's not doing any good talking. We need something done now. It's hurting everybody, including myself. I am an injured worker.

I'd like to introduce right now one of the injured workers of my group who is frustrated, and I would like him just to briefly touch on the bases, how he feels, how he's been hurt and how he feels he's going to be hurt in the future with this bill. His name is José Cormo, and we've fought very extensively on his case, which was in black and white. We should not have had to take the steps that we did, but we did gain as we went up the ladder. Unfortunately, this Bill 165 is going to stop that ladder from being climbed. It's going to go backwards. José?

Mr José Cormo: Just I can say a lot of promise, nothing done for the poor injured workers.

Mr Jolin: How do you feel about this bill?

Mr Cormo: I feel that for me, I'm an old man, and I think they ought to help me, help other ones too, if they go like that.

Mr Jolin: Just to touch bases on that, what José is trying to say, he's like many of the people of not only the Sault but the province of Ontario: He is not illiterate, but he is a person who is not understood because of his capability with the English language. That is a barrier, and it's a barrier that's been happening in different languages. It's also, I might add, a barrier of the injured worker towards the government representation that he's supposed to be receiving, and by government representation, I say the WCB involved in that system as we try and fight for our rights, for your claim or for your doctor's rights to be heard instead of the WCB deeming and them saying: "Okay, that was the meat chart. This is what you are."

I'm totally fed up with the whole situation. I have been since I've been fighting pre-Bill 162. It's an ongoing system, and I'm hoping this committee will make changes and stand for the rights of the injured worker as a whole, not just as a bunch of bureaucrats sitting in the back room having coffee and saying: "Well, do you think we should do this? Do you think we should do that?"

I believe, with all dignity and assurance for the injured worker in the future, in the past and today, on this Bill 165 there should be more meetings, more hearings, and they should be listened to a heck of a lot more to get some rights out on the table and get some information

from the injured workers themselves so that they can be heard and so something can be done about it. I thank you very much.

Mr Martin: Thanks, Pat, for coming forward again. Your presentation this morning has not surprised me at all. It's consistent with the message you've been bringing to my office and to tables that I've sat around over the last four years, and certainly in this community for a lot longer. Again, we're hearing you. You're telling the story, and it's a story that needs to be told.

We have a system at this point in time that's not working. It's not working for injured workers, and it's obviously not working for employers either, because none of them have come forward to say the way it is ideal. Indeed, our small effort here to try to change the system to respond to some of the anxiety that's out there is not meeting with a great deal of support either, to be honest with you. We haven't had one employer come forward who is supporting this, and yet we have groups like yourselves, Pat, saying that what we're doing here isn't enough.

As a government, we're trying to find some balance. We know that it has to be fixed. The commission will give us some information that hopefully you will participate in, and this legislation at this point will take us a distance to managing a problem we have that we may or may not agree is big or small, but nevertheless is out there, and that's the unfunded liability.

I wanted to ask you a couple of things, Pat, because I know that you can speak to it more eloquently than I can.

One, the issue that you've brought to my office most consistently over the last while is this question of deeming. It's something that previous governments I think foisted on you that wasn't very much appreciated. In this bill there is some movement trying to get people back to work, which would relieve somewhat a bit of the anxiety around the question of deeming, because then they couldn't deem any more because you would have a job and there wouldn't be this sort of airy-fairy notion out there that somehow you could be doing another job. Have you thought about that at all? Does this go a distance for you? Is it helpful?

The other question I would ask you: Is it appropriate, as we've heard here this morning, that employers and this system should continue to push a system that in the end has injured workers resorting to welfare for their wellbeing?

Mr Jolin: Thank you, Tony. As you have said and as you are aware, your office is flooded the same as ours is. Fortunately for us, we have an office right across the street from you. In some instances, it's convenient; in others, it's not.

Mr Mahoney: How do you like it, Tony?

Mr Martin: Some days it's okay.

Mr Jolin: The way it works is that we know that the hands of the MPPs are tied in all areas, not just in the Sault. There are only certain things you can do, certain things you can't do. We find that's not enough. That's why we're there. We will take it one step, 10 steps or 100 steps further. We want not the issue just talked about

and then gone into a long recess of hearings and committees and delays and everything else.

On the deeming, Bill 165 does break it down a bit. In your own words, it is not enough, and the reason why it is not enough is because it took all the directive words out of the act itself that say the employer "shall," the employer "will," the employer "must," and it changes that and it says they "may," they "might," if they wish. That's total discrimination, because we're already in that process and this is taking us one step backwards. Instead of going forward, we're going backwards.

The act itself, if done the way it is without it being amended, I'm sorry, I just cannot go along with it. The simple reason is, myself being an injured worker, I was deemed by our technical advisor in Sault Ste Marie, which is doing it to hundreds of people here in the Sault and Algoma area. It's happening in other areas too which I'm made aware of, but I'm speaking specifically right now of the Sault and Algoma. We can get the case worker, the rehab counsellor, to put a person into two levels of schooling and he qualifies for the third level, he needs it to go out there and get the job that he wants, because he's only in his mid or late 20s or maybe 30s; maybe he's in his 50s. But the damn system the way the WCB is working is the regional technical adviser turns back the case worker's decision of saying that he supports that goal for the injured worker to get him re-established in the workplace, and he says, "No, I hereby deem that person that he's reached his minimum wage level. He's already got two credits in school. He doesn't need the other five credits," even though there's documentation thicker than this that says that he does. They've supported it. They back it. You in your own office and probably other MPPs here do too. You support and you back it like we do, but it's just discrimination, total discrimination, as is.

Mr Mahoney: The most interesting story about deeming that I've heard was in Timmins, where a school caretaker who was injured was deemed to be able to do the job of an air traffic controller. The good news was we weren't flying into Timmins that day.

I'm interested to hear the local member say that the former government foisted deeming on you. You, I think, Pat, presented to the outreach tour that I conducted some time ago in this report, and we said at the time that everything was on the table. We're prepared to look at and listen to ways of reforming Bill 162, any of the mistakes that were made in there, and we're not afraid to admit that there were mistakes and to look at recommendations.

This government has an opportunity. They're passing a bill. It's curious to me why they haven't addressed deeming in here. It's one thing to kick somebody, but they've got the limousines right now, for a short time. They've got an opportunity to make a change.

1050

I just want to share with you recommendation 23 of the outreach tour entitled Back to the Future, wherein we say, "The concept of 'deeming' be replaced with a comprehensive STEP program (outlined in greater detail in the preceding financial sustainability section), with the

ultimate goal being re-employment of the injured worker." That's what we believe in. We're not afraid to look at a system that isn't working and change it. It's unfortunate that this government wouldn't do it. I assume if they're really unhappy with this—Tony, you could vote against this bill in support of these people if you really want to do something to help injured workers.

Mr Jolin: Thank you, Mr Mahoney. Some of the points you brought up are very good, it's very truthful and it is on the table. That is, I believe, why you're here today. But committee hearing after committee hearing, after proposals made to the government, proposals made to the Workers' Compensation Board, still we're in the dilemma of waiting. Myself, I had a three-hour WCAT yesterday. I've had to propose to the WCB to prove that dating back 14 years—38 pieces of documentation by a representative and myself, all highlined, dictated by different professionals in the medical field, and the WCB still does not listen.

We were after your government. I remember being after the Conservatives, Liberals, now the NDP. What we want to know is, when is something going to be done in our favour? There again, in this Bill 165, the word "deeming" is not mentioned. It's sort of highlined underneath and between lines, but it is not actually—take re-employment, for an example. The deeming part is overriding that, but it's not mentioned in this part of the act changing Bill 162, 165, and where one might come next.

What we want is, yes, we want our friends in the NDP government, or if the Liberals are in there, or Conservatives—when a government is in power, they're our friends because they are the only ones who can change things. We want changes now. We want them now. We're tired of waiting.

Mr David Johnson: I'd like to thank you for your deputation as well. I get the strong sense that you don't consider the present situation to be satisfactory and you don't support Bill 165. You've used words like "discriminated against." You've used words like we should be "standing up for the rights of the injured workers," that something needs to be done, something needs to be done right now. I can assume—this is my first day on this day on this particular bill—that you're talking about the red tape that you have to go through. You're talking about the financial support. Maybe the first part of my question: Am I right so far?

Mr Jolin: Yes.

Mr David Johnson: So you would like to see—well, for example, you're opposed to the Friedland formula. You would like to see somehow more money being funnelled to the injured workers.

I think you put your finger on it when you talked about the unfunded liability. I think the government has to some extent brought forward this bill in recognition of that factor, although employer groups feel that the government hasn't gone far enough and you feel the same way for opposite reasons.

If more money is to be made available, and looking at the fact that there is an unfunded liability and looking at

the fact that there's a negative cash flow this year, I guess for the first time in the WCB, where do you think the money should come from? Should it come from higher assessment rates to the employers? Should it come from the taxpayers in general? Or is it a problem? Because as you indicated, the administration is in shambles and we should be looking at the savings in the administration.

Mr Jolin: Yes. As a matter of fact, after everything you said, which I agree with in part and in total both—okay?—your last sentence right there clarifies the whole situation. The WCB is in shambles. Not financially. That's a bunch of crap. This unfunded liability is money that's supposed to be proposed for the injured worker's wellbeing till age 65 or death do us part in the future. That's just deemed again, deeming money from the future, and they're saying it's an unfunded liability on the fault of the injured worker today. That's crap, in plain language.

The thing is, if they would cut back a lot of the—which this government has done—staff situations and positions that were totally unnecessary—they have done that, which is great. That has stopped the unfunded liability from getting further so-called in the hole, as the people and the government situation predict, but it is still not hitting the nail on the head.

The situation of the injured worker compared with the number of people handling that one individual's case is totally ridiculous and should be stopped now. You go to a case worker, you go to a rehab counsellor, you go to a technical adviser, you go to an adjudicator, that adjudicator sends you to another one, and then it's a decision review officer, then it's a hearings officer, then it's—like, bang, bang, bang, bang.

Everything and every hearing I've done, and just about every WCAT that I've done, when you're in there you're only in there for, sometimes, 15 or 20 minutes. They say: "What the hell are you doing here? This should have been settled two levels below." You know why? It's that good old stamp, "Denied," "Denied," "Denied."

The Vice-Chair: Thank you, Mr Jolin. On behalf of this committee, I'd like to thank the Injured Workers Advocates of Sault Ste Marie for their presentation this morning.

Mr Jolin: Thank you very much, and I hope something's done.

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 268

The Vice-Chair: I'd like to call forward our next presenters, from the Service Employees Union, Local 268.

The Acting Chair: Good morning. When you get yourself set there, if you could introduce yourselves for the sake of Hansard and the committee members, then, at your leisure, start your presentation. As with everyone, we would request that you leave some time near the end of your 20-minute time limit for some interaction with the committee.

Mr Glen Chochla: My name's Glen Chochla. I'm a staff representative with Service Employees Union, Local

268. To my right are two other members of the Service Employees Union. Vincent Pistor is our staff representative here in Sault Ste Marie. Richard Armstrong is the director of the local and also the vice-president of the local.

We'd like to begin by just saying a few words about the local to give you an idea of where our membership comes from and what their concerns are. We are primarily a health and social services public sector union local. We have 4,100 members working in about 40 different workplaces across northwestern Ontario from Thunder Bay to Sault Ste Marie. About 100 of those work in the private sector, the rest in the public sector, primarily in health and social services, and they work in a wide range of health care occupations. They work as RPNs, registered practical nurses; ambulance attendants; they work in dietary. The great majority of those work in hospitals and nursing homes. They also work in community health care and community social service agencies.

It's a fact of life for a great many of our members that they suffer from chronic back fatigue, chronic back injuries, repetitive strain injuries. These injuries are just far too common. We expect that ugly reality, if I can use the term, is going to get worse for our members as staffing levels decline in health and social services and as the cutbacks in health and social services continue. We're actually seeing more and more employers becoming tougher, becoming—if I can use the word—almost brutal in discarding injured workers. We're constantly fighting for their rights before arbitration panels and so on and so forth.

I don't think our members are too unlike many of the workers, the vast majority of workers in Ontario today. In Ontario every year approximately 300 workers are killed in the workplace from workplace-related injuries. In addition to that, another 400,000 suffer injuries in the workplace.

1100

I think it's important to set a realistic base for this discussion. Workers don't control the workplaces in this province; the employers control the workplaces. That's changed to some extent through joint health and safety committees and improvements to the Occupational Health and Safety Act. But employers are responsible for this situation. Workers are not the architects of this. We didn't set it up. We're the victims of this situation.

The first question we want to ask you to think about as a committee is, how is the workers' compensation system working for workers and what are workers telling you through injured workers' groups and through the Ontario Federation of Labour and trade unions? That's your first concern, number one concern. Because we didn't set up the problems we have right here. We're the victims of it.

We want to just go through, at this point, some of the things about the act. Let me just say this: In our local we're having a really hard time understanding where employers are coming from in criticizing this act, because it's a very moderate act. Especially with the de-indexing of many of the benefits in the Friedland formula, we just don't understand how employers can possibly take a position against this act. There are many things in the act

that we're critical of as being too much in the way of giveaways to employers.

There are some very positive things about the act and we think the government deserves credit for those, and we want to talk a little bit about those. First of all, we think the amendments to sections 53 and 54 are positive. The amendments strengthen the requirements, give the board the authority, the power to determine whether an employer has fulfilled its re-employment obligations. Also, the board can require the employer to now participate in vocational rehabilitation planning. We're very happy to see that.

We're also happy to see the addition in section 103.1 of establishing experience and merit rating programs for employers that are based on health and safety practices in the workplaces and vocational rehabilitation practices. We think that's positive.

But we do agree with the Ontario Network of Injured Workers Groups that the setting of assessment rates needs to be linked with actual re-employment success in the workplace. We also agree with the Ontario Network of Injured Workers Groups that the experience and rating programs that are established under section 103.1 must be designed to measure actual reductions in accidents and diseases rather than the dollars that are allocated to the employer's WCB account.

The re-employment and vocational rehabilitation reforms are essential from two points of view. First of all, if you really want to benefit injured workers, get them back to work. Secondly, if you're concerned, and genuinely concerned—putting aside the political rhetoric on unfunded liability—with the long-run financial viability of the WCB system, the way you save money is getting workers off the system and back into the workplaces. That's got to be the centrepiece of any reform, and in a lot of respects the government has achieved that and deserves a lot of credit for that. That's absolutely essential and that's good.

We don't buy the argument that the WCB system is in financial difficulty at this point in time. However, we think if you are concerned about that in the future, and that's always a possible problem in the future, then go after the voc rehab and re-employment aspects of reform. The government has done that and that's good.

We also think, second positive, that the amendments in section 56 that ensure that the board of directors of the WCB has representatives from workers, employers and the general public are good, very good. We agree, though, with the Ontario Network of Injured Workers Groups that there needs to be an assurance that injured workers' groups themselves have a representative on the board of directors, and we'd like to ask the committee to make some recommendations with respect to ensuring that they are part of the worker representatives on the board.

We're also happy to see the \$200-per-month increase in the supplement in section 147 for those workers who are receiving permanent disability pensions. We think that's positive. We agree both with the Ontario Federation of Labour and injured workers' groups that the cutoff in that section of workers who were 65 years of

age or older on July 26, 1989, should be removed. We also agree with the injured workers' groups that the \$200-per-month increase in that supplement should apply to all injured workers who are receiving permanent disability pensions who are unemployed or underemployed. It should apply to more injured workers.

The fourth thing we're happy with is the royal commission to study alternatives to the present system. We think that's very positive and that the committee should be supporting that, but we again agree with injured workers' groups that injured workers' groups should be directly represented on that commission.

There are some problems with the bill, and we just want to point those out to you. We mentioned the Friedland formula, which caps the indexing of most benefits to 75% of the consumer price index minus 1%, to a maximum of 4%. We agree with the Ontario Federation of Labour and injured workers' groups that this should be removed. We fought a long time in the labour movement and among injured workers' groups themselves to achieve indexing, and it shouldn't be removed.

We're also concerned about the amendment to section 58, requiring the board of directors of the board to "act in a financially responsible and accountable manner." We don't know what that means. Why it's in the act we're not sure. We think that should be removed and we'd like to see it removed unless it's clarified as to exactly what the implications of that are, because if it's going to be used as an excuse to gut the WCB system in the future, it shouldn't be there.

A third concern we have is that Bill 165 has not eliminated the board's power under section 93 of the act to overrule WCAT decisions. We think that's got to be addressed and we share the concern the OFL has about that. If you want to make sure that the interpretation of the act is fair and is independent and is justified and is just, there shouldn't be the power to overrule that. We'd like to see the committee remove that section.

Fourthly, we're also concerned, and we share the injured workers' groups' concern, that nothing has been done to require all Ontario employers to be covered by the WCB system. Again, if you're concerned about the financial viability of the system, we should be bringing all employers in under the system.

On the whole, though, a question: Is the bill itself acceptable without any changes? We would have to say yes, primarily because of the bipartisanship that you now have in the WCB system with Bill 165 and also because of the rehabilitation and re-employment obligations that are now there. On the whole, it's a good effort and hopefully it'll be improved in the future. However, there definitely are some improvements that need to be made.

The Acting Chair: Thank you. We will start with Mr Mahoney. Two minutes per caucus.

1110

Mr Mahoney: Flabbergasted might be a good description. I heard your concerns about the bill. We heard from Local 444 of the CAW in London yesterday, which identified 17 sections of the bill they had major concerns with. There are only 36 sections in the bill; 11

of them are fundamentally housekeeping. That leaves 25, and out of 25 substantive sections in the bill they disagreed with 17 and said so quite forcefully, and then adopted the same posture, with respect, that you've adopted here this morning of identifying all the problems you have with the bill and yet saying you support the bill.

I just have some real trouble understanding how organized labour can support the first social democratic government in the province deindexing the pensions to redistribute to other workers. I mean, it's sort of like, "We've got principles, and if you don't like them, we've got others." It's really fundamentally a position that I would have thought that you and other people in organized labour, Mr Wilson and others, would have been inextricably opposed to. The question then would be that if you really are opposed to it in a serious way, how can you support this bill? It goes against everything that you purport to stand for in organized labour.

Mr Chochla: In any collective agreement that you can take that our local has negotiated—and this bill was a product of a negotiating process that employers were part of and, I understand, agreed to at a certain point and then walked away from the agreement—in any collective agreement that we have negotiated I could point out far more than 17 problems with it, but let me tell you that those collective agreements are supported by the local and voted on by the members. They're not perfect; nothing is ever perfect. The question is, on the whole is this an improvement? If it's an improvement, you support it. That doesn't mean that you don't criticize and try to improve it through this committee process and in the future. But the central reason for supporting this is because now we have some bipartism, we have workers and employers who are on the board and we now have re-employment and rehabilitation as a centrepiece of the legislation.

Mr Mahoney: We've got bipartism now at the board.

Mr Chochla: Those two things are very important and those are two things that injured workers and the organized labour movement have been fighting for for a long time.

Mr Mahoney: The injured workers must feel betrayed by this position.

The Acting Chair: Thank you, Mr Mahoney. Mr Carr.

Mr Carr: I think Mr Mahoney's right: If a Liberal or Conservative government had brought this in, we would have been peeling people off the roof and they would have been swinging from the chandeliers. But things have changed, just like with the social contract; we never thought we'd see an NDP government open up contracts, roll back wages. I think everybody has moved positions over the last little while.

I look at the financial statement, which says that the revenue is about \$2.8 billion coming in; going out it's \$3.3 billion. The previous chap who was in said if we dealt with the administration, we could make the cutbacks there. It's less than 2%, if you look at the audited statement. If you got rid of all the administration, shut it

down, didn't buy a paperclip, had nobody employed, we would still be in a deficit position. The deficit position is going down, the difference between revenue and expenses.

I think everybody realizes you have three options: You either continue to run up the deficit—and there are some who say you could do that; you can increase revenues, which would be to go to businesses and ask them to pay more, at a time when we're at a record number of shutdowns, and they say, "We can't do it, it's WCB costs, high taxes, a number of things"; or you can cut back expenses.

I was interested in what you said, because the bulk of it, the \$2.8 billion that we're spending out each year to injured workers, goes to benefits. There are two things you can do: You can cut back what they get or you can do it through rehabilitation. The thing I liked about what you said is that you feel we can reduce the benefits through rehabilitation. So those who have come before us, legitimately injured, wouldn't get their benefits cut, but we would be actually getting more people back in the workplace. I think that's one thing that labour, business, NDP, Conservative, Liberal—I can't see how anybody wouldn't agree with that.

My question is to you—and it's a broad question and it's a difficult one; if you can answer this, we will make you Premier—how do we do that? Governments of all political persuasions have tried to get people back through rehabilitation and get the benefits levels down. What haven't we been doing that you see we could be doing in order to reduce the benefits by getting people back to work?

Mr Chochla: I think you need to sit down and ask injured workers that question and discuss that with them. I think you need to do what injured workers have been proposing for a long time, that you look at some of the European systems, which have been very successful at getting injured workers back into the workplace. You need to sit down with organized labour as well. Now, with workers being represented on the board of directors along with employers under Bill 165, the very strong hope is, and I think there's a good chance that we're going to see that studied and we're going to see more success in that area—that, coupled with the strength and language in the act on rehabilitation and re-employment.

Ms Murdock: Thank you for your presentation. I guess I just have to correct the idea again that unfunded liability and deficit are not the same things. I think it needs to be said time and time again. One of the presenters in London used the example: A \$100,000 mortgage on your house—obviously, we all know what mortgages are—with \$37,000 in the bank doesn't make the whole idea as desperate as what has been presented to us, I think, in terms of unfunded liability. That's just a comment.

In terms of your presentation, I wanted to talk to you about return to work, I guess, and the whole issue of re-employment, which I agree with you is very important. In some of the conversations out in the hallway yesterday, in between presenters, talking with one particular group, they told me that the section in regard to employers being

ruled uncooperative in terms of rehabilitation was going to result in more appeals, where every decision adjudicators made would result in going through the appeal process and in the end cost more money. I would like your opinion on that, or your experience, if you have any return-to-work programs in place now.

Mr Richard Armstrong: We have several workplaces where we have different types of return-to-work programs. Some work really well when they work with the employee, the worker, and work from their premise, rather than it being a forced thing to save money from workers' comp. When it's a positive program that will bring people in and do work hard and that, it works well.

One of the things we always miss, though, when we're talking about the issues of workers' comp is when we work with employers trying to develop collective agreements. With Mr Carr's question to Glen a minute ago, I think too much emphasis is on the after-the-accident thing. When we bargain collective agreements—and this is where employers can prevent their costs, if that's what they're concerned of, and prevent costs to the systems, if they begin to take a proactive stand towards prevention of accidents.

Right now, we talk at these hearings about coming back to work. My major concern as a trade unionist is to prevent any worker from getting injured. If employer groups and governments and political parties are really concerned about the whole aspect of workers' comp costs, then the easiest way to reduce that is to set up systems that prevent injuries in the workplace and to make management accountable. If you're a senior manager, you should make sure your junior people are accountable and the whole system should be based on health and safety, rather than getting into issues of return to work.

When people are then injured, it should be a positive approach to get them back. As Glen had indicated, then you can save costs, if you retrain people and get them back to work. Nobody wants to be home and not working.

The Acting Chair: I thank you very much for your presentation. I know we could go on for ever on this topic, but unfortunately the time has run out.

ONTARIO MINING ASSOCIATION

The Acting Chair: Our next presenters are the Ontario Mining Association, if they could come forward and introduce themselves for Hansard. As we ask with everyone, if you could leave some time at the end of your presentation—I'll try to give you a five-minute warning, if you go that far, so we have a couple of minutes for some interaction with the committee. At your leisure.

1120

Mr John Blogg: With me today are Randy Forget, who is with Rio Algom and is their compensation coordinator, and Mr Gary Hughes, who is Inco's general foreman of compensation. I am John Blogg, manager of industrial relations and secretary of the Ontario Mining Association.

The Ontario Mining Association is pleased to have this

opportunity on behalf of its members to provide its comments on Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act.

The OMA, as bit of a background, was formed in 1920. We now have 36 member companies representing all business sectors of the mining industry. Our mandate is to improve the competitiveness of Ontario's mining industry, so consultations with government and its agencies are an important part of our mandate and we believe our participation in public policy dialogues like this one may contribute to the improvement of our industry as well as the social and economic life of this province.

The jobs created in the mining industry contribute to the balance of trade and are investment opportunities. Our public funding through tax dollars and our steady stream of products into our daily lives and the more than \$5 billion which we provide to the provincial economy make the mining industry a key financial factor. However, the government must appreciate that our members are subjected to internationally set prices which, along with the additional government-mandated costs, increase the pressure on them to maintain a competitive position and viability in this province.

This global competition has also accelerated the introduction of new technologies and a continuing effort to achieve greater efficiencies in safety and to be environmentally responsible.

Today we wish to discuss how Bill 165, if not amended, will add to the problems our members face in this global competition and cause them to continue to look elsewhere for the placement of their investment dollars. We see Bill 165 as an opportunity for meaningful reform of the workers' compensation system, much as we saw Bill 101 and Bill 162. However, unlike the governments of previous bills, this government had the advantage of the most comprehensive research into the problems affecting this system ever undertaken and was provided with recommendations which were workable, actuarially supportable and fair to all its stakeholders. Most importantly, the effect of these recommendations is that they would lead to the retirement of the unfunded liability by 2014.

To our members, the most significant, real problem is simple: the WCB is broke. They have allowed their costs to exceed their expenditures. We warned the government in 1984 that the very sustainability of the system was at risk, and that's when the unfunded liability was only \$2.7 billion. That was a PC government, by the way. Today, the unfunded liability is placing not only the viability of future benefits to workers at risk, but that of the mining industry in this province.

Since 1976 our industry has reduced its lost-time injury rate by 80%. This reduction, which has placed mining as the third safest industry in the province, has been matched by an increase of 781% in our workers' compensation costs per claim and 1551% increase in our unfunded liability. In the package we provided you, appendix 1, are some graphs that relate to those numbers. In appendix 2 are further graphs that show how our

industry has improved over the last 10 years. Appendix 3 is most of the written comments I have today and appendix 4 is the PLMAC overview proposals, which we support.

In appendix 2 we have a series of graphs which further illustrate how our members are performing in their efforts to provide safe, healthy workplaces for their workers and how this drive to be both a good employer and attractive investment is progressing. Unfortunately, Bill 165 does not provide amendments to assist us in doing what we already do better. It does not help us to provide for safer workplaces, better rehabilitation or re-employment opportunities for our workers, and does nothing to give us confidence that the unfunded liability will do anything but escalate. The absence of such amendments adversely affects our members' ability to compete in the global marketplace.

Bill 165, we believe, creates inequities not there today and fails to appropriately address the major financial dilemma of the unfunded liability. You have heard in submissions throughout the last couple of weeks statistics, quotes and comments of independent actuarial bodies, labour, members of the PLMAC, such as Mr David Kerr, president and CEO of Noranda Inc and one of our members, so I'll not bore you with those again. They are in our written submission and suffice it to say that the OMA supports many of these comments and the proposals of PLMAC.

In the time remaining I will attempt to address those sections of the bill which cause us impediments to how our members currently function within the WCB arena, and explain how they fail to address the important financial concerns we have about the manner WCB handles our money.

The list of purposes contained in subsection 1(1) of the bill focuses solely on benefits to workers. Consequently, its use will solely be, in our view, to expand benefit entitlement. Since, as in other legislation, the purposes guide all interpretations of the act, it is imperative that a financial responsibility clause be added during your upcoming clause-by-clause discussions. Without it Bill 165 is simply the next step in the promotion of a universal disability system under the guise of workers' compensation reform, since it binds the board of directors to increase assessments to fund disabilities which can be shown to have any relationship to work, regardless of the off-work contributions to that disability. The purpose clause presented by the PLMAC business caucus, and originally agreed to by labour, must be the purposes of these amendments if the system is to survive and serve the stakeholders it purports to protect.

On the specifics of the bill again, medical reporting: Bill 165 amends subsections 51(2) and 51(3) and clause 63(2)(h.1). It will not assist our members in better communicating with their employers, the board or the health care provider, and they will certainly not ensure that the worker receives the appropriate assistance required—in our industry I'm talking about. What these amendments do is effectively put at risk the ability of our members to provide the kinds of rehabilitation and re-employment opportunities they currently provide in some

instances as a result of agreements between themselves and their unions.

Sections 8 and 14 of the bill, by restricting the kinds of information employers may receive from a treating physician, are introducing an impediment to meaningful voc rehab and re-employment. Our members need the complete diagnosis of a worker's disability to ensure it is compatible with the reported accident, and they require the work restrictions the disability causes to ensure the worker is provided with the program that best suits his or her disabilities or abilities. Bill 165 amends sections 8 and 14, we believe, are regressive as to how our members now function in cooperation with their unions, health care providers and the WCB.

In the area of voc rehab, it's been our view for years that voc rehab is a core element of the Ontario workers' compensation system. The provisions of rehabilitation services by the WCB have been subjected to two extensive reviews through task forces. First was the Ontario Task Force on the Vocational Rehabilitation Services of the Workers' Compensation Board in 1987 and, more recently, the Chairman's Task Force on Service Delivery and Vocational Rehabilitation in 1992.

Over the last decade great strides have been made within the system to improve the quality and impact of voc rehab. The data contained in our written submission, which is at the front of the submission we gave you today, details in number form the dramatic improvements in this area of WCB management. However, as we have already stated, our members have been actively and cooperatively engaged in voc rehab and re-employment with their workers and unions for years. By most accounts, this cooperative approach has been successful, primarily because it has involved all of the parties with an interest in returning the worker to a work level of fitness.

1130

Bill 165 amendments to section 53 of the act introduce a mandatory power to the WCB we don't need and don't want. It is our experience that when given unilateral powers to intervene, government agencies seem to be unable to resist the temptation to intervene, even when they're not wanted and not needed. Unfortunately, the result is often the fracturing of cooperative workplace relationships. The rehabilitation of an injured worker is too costly a venture to be exposed to the potential disruption of an unwanted third party with a limited understanding of the history of the workplace partnership.

When our members and the workers and/or unions decide that the services of a WCB voc-rehab counsellor are required they ask for them. In this manner, the WCB becomes an accepted member of the team. It is our belief that section 9 of the bill will create conflict and complicate the delicate balance needed to effectively rehabilitate an injured worker and as such, we simply cannot support it.

For similar reasons, we cannot support amendment 10 of the bill, nor is section 27 of the bill, which provides the WCB with the power to impose undefined fines for undefined crimes for what they determine as inappropriate vocational rehabilitation, supported by our members.

The reason here is very simple: Even with the best efforts of the union, health care provider and the company some people, few as they may be, do not want to be rehabilitated back to work with their work employer. We don't trust the board to responsibly rule on such occasions.

On the governance issue, section 11 of the bill proposes to repeal section 56 of the act and install a bipartite board of directors. Bipartism at the policy level has been a failed experiment, in our view. It has failed at the Workplace Health and Safety Agency, the joint steering committee on hazardous substances and it failed at PLMAC.

Bipartism was an attempt to emulate the success of the tripartite mining legislative review committee by the Liberal Party. Unfortunately, what everyone seemed to forget is that unlike tripartism, which is what the MLRC is, bipartism removes government and it's government that is ultimately responsible for public policy, not labour and not the employers.

What also appears to have been ignored is that while unions and employers have a very important part to play in the development of public policy, so do all the WCB stakeholders, and the government, which represents the public in this case, is one of them.

By presenting an amendment which ignores everyone except unions and employers, we believe the government has demonstrated a poor grasp of the obvious. We believe more effort needs to be given to finding a multistakeholder mix which would fairly represent those directly affected by the workers' compensation system, and we don't disregard the last speaker's comment that the injured workers certainly be on there as injured workers.

What has tended to amuse as well as confuse our members is section 16 of this bill. We wonder why on one hand the government trumpets the virtues of bipartism, yet on the other believes there's a need for them to assume the responsibilities of a new bipartite board for a year. We believe that such unprecedented intervention into the management and administration of the WCB will cause potential investors to avoid putting their money into Ontario businesses, most importantly the mining industry which has already seen billions of dollars go south during this administration.

Section 21 of the bill amends section 72 of the act and introduces what we believe to be mandatory mediation services. Mediation can be useful, provided the basic principles referred to on page 7 of our written brief are respected. The proposed amendment suggests a wide range of circumstances, but does not indicate what happens when mediation is successful, nor does it prohibit or limit objections to settlements.

Section 18 of the act prohibits agreements between workers and employers on benefit levels and on benefit issues. The question we have here is, what is the value of a non-binding and perhaps illegal amendment to the act? Even if it is legal, by not making it voluntary, are you not creating a contradiction and thereby dooming the mediation process to failure? We see no value in the amendment, as it puts in jeopardy the cooperative environment many of our members have long since established with their workers in unions and therefore is

another impediment to how we do our work on rehab.

As far as proceedings against the board are concerned, Bill 165 contemplates broader protection for members of the board of directors, officers and employees of the board. It recommends that protection should be afforded board representatives in any proceeding brought against them in the exercise of their judicial responsibilities. We reject this amendment as it fails to cause board people to always be mindful of the requirements of the statute and the unfolding jurisprudence whenever rendering a decision. An example we use is the claims adjudicator determining claims for entitlement. A lot of the problems we have between the board and WCAT are that failure.

On experience rating, Bill 165 introduces changes to how experience rating is administered. The development of experience rating in Ontario represents, in our view, one of the best examples of joint policy development between business and government. Since its inception, the NEER experience rating program has been supported by the mining industry. NEER helps promote a fairer distribution of the assessment dollars and encourages employer accountability for accident prevention and WCB claims management.

There have been two studies into NEER which you've heard about in previous presentations, both attempting to substantiate claims of mismanagement that were brought on by labour. The results of each study endorsed the experience rating program as successful in generating a "substantial incremental impact on increased health and safety initiatives by employers." The studies showed a decrease in injury frequencies and could give little or no proof to substantiate the charges of labour that NEER was a broad-based employer ripoff of the system.

The PLMAC business caucus, after careful review, offered its full support of the experience rating program as having achieved its primary goals of making workplaces of Ontario safer and employers more directly accountable for their actions.

The OMA fully supports the NEER program as it's currently administered. We believe the additional criteria proposed in amendment 28 of the bill, 103.1, does nothing to improve the program or our members' health, safety and WCB claims management programs. It will further serve to confuse and frustrate employers who will be subjected then to no less than three separate audits from different government agencies of their health, safety and WCB programs. It's like your having to have three driver's tests, one by the MTO, one by your local police and one by the OPP, to prove you're a competent driver, and we just think that's inefficient. The OMA rejects amendment 28 of Bill 165 as it does not improve the current experience rating program or our members' ability to be competitive.

The Vice-Chair: If I may interrupt, you have about three minutes left on your presentation.

Mr Blogg: You got it. Our main concern with the indexing formula, the Friedland formula, is that the government has given exemptions to that formula. We don't object necessarily to the \$200, but what the PLMAC said was: "Let's have a better look at what is needed by the workers on supplements. It may be more,

but the system has to find that money from inside, from reductions. You don't fund it by adding to the cost of the system."

I'll just get to the conclusions here. The members of the OMA recognized the need for reforming the WCB a decade ago when the unfunded liability was only \$2.7 billion. We also recognized that proactive cooperative programs in health and safety and WCB claims management were good business and we did it.

Our industry provided a good deal of the work behind the PLMAC process because we believed that reasonable people would make reasonable recommendations and that a responsible government would implement them. Our disappointment in Bill 165 cannot be fully conveyed in words, but we feel betrayed by a government whose Premier vowed to serve all the people of Ontario.

The PLMAC proposals, in our view, are reasonable. They require everyone to hurt a little. They reflect and respect the views of the last two chairs of WCB royal commissions, justices Roach and McGillivray. They seized the opportunity for meaningful reform and went at it head-on, in an actuarially supportable manner and in a manner which, for the first time in years, provided a level of fairness for all stakeholders, thus assuring benefits necessary for the injured workers long into the future.

Bill 165 fails on all accounts to meet these objectives and those given PLMAC by the Premier. More importantly to our members, they fail to provide us with tools to improve what we already do very well. They introduce arbitrary third-party intervention where it is not wanted or needed, which will likely result in a breakdown of long-standing cooperative relationships. They fail to address the major driving force behind our costs, which is a misinterpretation by the board of the future economic loss provisions. Finally, Bill 165 discourages investing in the mining sector and, together with other mandated costs, negatively impacts on our members' ability to compete in the world market.

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If left unchanged, Bill 165 will further bankrupt the system and cause workers to eventually lose the benefits they justly deserve. We urge the government to withdraw the legislation and reconsider the recommendations of the PLMAC which we believe have been based on sound research of the problems in this system.

The Vice-Chair: Thank you. A very brief comment. Mr Carr.

Mr Carr: This is a tough question and you might not be able to answer it, either yourself or the association or some of the front-line people. You said in there, and we've heard from a lot of people, legitimate people who are very concerned, there isn't enough money. They've come forward; they're suffering. But in your comments you said there are some people who don't want to go back to work. Either front-line workers or as a group, what percentage of the workers, in your estimation, don't want to go back to work?

Mr Blogg: I wouldn't want to put a per cent on it. I would think it's somewhat less than 2%.

The Vice-Chair: Thank you. Ms Murdock.

Ms Murdock: Thank you very much. Really, I could ask you 50 million questions because I disagree with you so inherently in some areas, but the one that I really disagree with you on is the comments you made in regard to PLMAC in regard to the people who are exempted from Friedland. Yes, there was agreement in PLMAC for survivor and dependent benefits, 100% pension, 100% FEL, unemployed workers with disabilities injured prior to 1990 as defined by section 147(4), all of those groups identified by both labour and management as being people who have to be looked after somehow. But the PLMAC agreement was the—

The Vice-Chair: Ms Murdock—

Ms Murdock: —nature of how this special consideration was not agreed to and left to the government, and we have made the decision. So what you said was not correct. On the record.

Mr Blogg: You're entitled to your opinion.

The Vice-Chair: Mr Mahoney.

Mr Mahoney: The government members try to perpetrate the fraud that there was some kind of an agreement that's reflected in this bill. I would like to read a letter, or a clause in a letter, from none other than Premier Bob Rae, dated April 21, wherein he says—this is Bob Rae speaking, not me:

"A 'purpose clause' will be added to the Workers' Compensation Act which will ensure that the WCB provides its services in a context of financial responsibility. This clause will also—"not "only," but "also"—"address the principles of fair compensation and benefits for workers, as well as enhanced rehabilitation and return to work."

He committed on April 21, in a letter to Jim Yarrow, chairman of the Employers' Council on Workers' Compensation, to include financial accountability in the purpose clause. Did he lie? Is Bob Rae a liar?

The Vice-Chair: I think that's a little inappropriate, Mr Mahoney.

Mr Mahoney: Is this letter lying, in your opinion, Mr Blogg, or didn't he understand?

Mr Blogg: I believe that Mr Rae writes what he means. We at the ECWC have taken—I'm an executive member of that group—Mr Rae at his word as it appears in that letter. That's all.

The Vice-Chair: Oh behalf of this committee I'd like to thank the Ontario Mining Association for its presentation this morning.

I'd like to call forward our next presenters from the Sault Ste Marie Construction Association.

Mr Mahoney: Point of interest or question to—

The Vice-Chair: As our presenter is coming forward.

Mr Mahoney: —what are you, parliamentary assistant? She's claiming that somehow this letter we've all been given a copy of does not claim financial responsibility will be included in the purpose clause.

The Vice-Chair: Thank you, Mr Mahoney.

Mr Mahoney: Would she like to clarify that?

Ms Murdock: I will at the proper time.

The Vice-Chair: Thank you. Order. I think we have a difference of opinion here that won't be soon settled.

Mr Mahoney: It's right here in black and white.

The Vice-Chair: Thank you, Mr Mahoney.

SAULT STE MARIE CONSTRUCTION ASSOCIATION

The Vice-Chair: Good morning and welcome to the committee. Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat briefer to allow time for questions and comments. Could you please identify yourself and then proceed.

Mr Rick Thomas: My name is Rick Thomas. I'm the manager of the Sault Ste Marie Construction Association. I welcome the opportunity to appear before the resources development committee today concerning proposals in Bill 165, amendments to the Workers' Compensation Act.

I represent the Sault Ste Marie Construction Association, a mixed trade-industry association with over 150 members whose businesses earn their living in all areas of the regional construction industry.

I feel that this opportunity for dialogue is vital. Over the years, our greatest task as an industry, with government, has been to attempt to show how our workplaces differ dramatically from the norm and therefore are affected differently than most by various legislation. It's important for our industry to be able to show you how legislative proposals may harm our ability to grow and be successful and thereby contribute to the regeneration of our area's economy.

The Ontario Workers' Compensation Board had an unfunded liability of \$11.5 billion at the end of last year; 36.7% of those debts are covered by assets. By contrast, the Confederation Life insurance company was funded at almost 93% when the superintendent of insurance liquidated it. It is even more alarming that this liability is continuing to grow by about half a billion dollars per year while rates continue to increase in the Ontario system, which is already the most expensive in the country. In the construction industry, the average cost of premiums paid per worker has jumped from \$962 in 1983 to \$2,508 in 1992. The 261% increase in cost could perhaps be justified if it had been used, as promised, to begin to eliminate the unfunded liability.

There can be no question that the grave financial condition of the WCB system in this province should concern every legitimate claimant and every contributing employer in the province. It is clear that the existence of the system is in jeopardy and it will continue to be until the government finds the will to gain control of benefit levels and to take the emphasis off expanded entitlement.

In commenting on the governance model, it is shocking to hear the deputy minister state that, "The responsibility for the unfunded liability rests with the WCB, not the government," after advising that, "Bipartite stakeholders will truly own the system." Let me be clear: Management has never asked for joint ownership, we have never agreed to joint ownership and we will not accept it. The public interest must be protected by the participation of neutral persons on the board of directors, while government must maintain ultimate responsibility fiscally.

Ontario's construction industry has made unprecedented improvements in health and safety over the past 10 years. The industry has lowered its accident frequency rate 62% from 1987 to 1993. In an industry which is by its nature risky, we have succeeded in virtually matching the reduced rates of injury for all other employers combined. In 1982, we had over 12,000 injuries at an average cost of \$10,813 to the board. Ten years later, our injuries are reduced to 8,012, but the cost has soared to an astounding \$55,875 for each of them. An important part of this reason is as follows.

We project that next year, 53% of WCB payments will be in the form of future economic loss awards calculated on a system that bears no resemblance to the way our industry works. These awards are made based on an assumed full-time, year-round employment, when in recent years few of our employees have enjoyed such a luxury. Once again, costs are rising because the system is insensitive to the realities of our workplaces. Hundreds of able-bodied construction workers are being awarded FEL pensions, even though their unemployment is a result of economic conditions, not their injuries.

Earlier, I mentioned our industry's dramatic reduction in lost-time injuries per hundred workers. There are a number of reasons for this turnaround, but we believe that the experience rating system has been the key. Our frequency drop parallels the introduction of CAD-7, the construction industry's own experience rating system. The intention of experience rating is to encourage employers to reduce costs, to reduce the number of accidents and to reinstate workers as soon as possible.

It is no coincidence that the implementation of CAD-7 has paralleled a 62% reduction in the construction industry's accident frequency rate. Experience rating has given employers some control over the huge cost of workers' compensation and it gives employers the message that if they reduce accidents and bring workers back to work, they will reduce not only the board's costs but their own.

Last Monday the government gave notice of its intention to amend section 103.1 to clarify the employers' concerns that experience rating is to be replaced by an audit of employer programs. The amendment does provide the statutory recognition of cost-based experience rating that we believe is necessary, but our concerns remain that the bureaucratic and interventionist program described in subsection (3) will destroy the effectiveness of CAD-7.

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Our primary concern with the template is that it completely redefines and refocuses the very nature of experience rating. Experience rating as it now exists is a results-based program. Employers reduce their WCB costs by having fewer accidents and by returning injured people to work. If they fail to do this, they receive a surcharge at a rate that reflects the increased burden placed on the system. The template moves the program away from being results-based to a mix of results- and process-based. The proposed template measures individual employers' programs through audit. It ignores the problems posed by the availability of work and the

mobility of workforces that demonstrated themselves in our industry. This template cannot serve the needs of this industry. Thank you again for this opportunity.

Mr Martin: I want to thank you for coming forward this morning, Rick, and to recognize for everybody the effort that you have made in partnership, in my experience particularly, with the organized labour side of your industry to reduce the level of accidents in the workplace and reduce the number of people who are off hurt and not well. I certainly empathize with you re the continued increase in cost in spite of that, and my question is going to be related to that.

But I wanted to, though, also say to you that it's my understanding that this bill doesn't in a significant way impact on the construction industry side of the industrial sector. Maybe you can talk to me a bit about that, that in fact there is some movement to bring the construction people together with government and the worker side to come up with some regulations and rules and some new approaches that would be more helpful to your industry. Maybe you can comment on that in your response.

The question, though, I have is this one, and it's related to the fact that your costs continue to escalate even though your record is better. It's something that's brought to us today and, I hear previous to this, by the workers themselves, the injured workers who claim that what they're making while they're off not well—and the frustration that they experience even in trying to get that—is not that substantial. So they're simply keeping up with the cost of living re inflation, and through this bill that will be reduced for them. They claim in one way that they are actually the people who are going to be paying the greater cost in this change of the system over the long term as we try to get to a more manageable liability situation. In a more dramatic way, this morning the group from Thunder Bay said that what this bill does is shift the system around so that it is now seen to be more palatable to actually hurt and kill people than to actually take care of them in a way that is cognizant of the real cost of doing that. Can you respond to that, Rick?

Mr Thomas: Our problems with the bill as an industry, I think, probably relate to its industrial aspects, genre. We don't have any continuity of workplace; we don't have any continuity of workforce. We have a problem now with reinstatement, and reinstatement as it's in the bill poses a procedural problem for us. Our costs are probably rising because people who are able to go to work for us have to go to work for an employer or out of a hiring hall where there is no work by that employer any longer or where that hiring hall doesn't operate. We have a problem in terms of the government understanding the way our industry employs people and applying laws to us that aren't sensitive to that.

I want to say how strongly we feel about CAD-7. It's a wonderful program. I've told you this many times. You can't legislate morality. It teaches employers very quickly that it's extremely expensive to have accidents and extremely expensive not to bring people back to work. That's not to ignore the moral side of injured workers; we're extremely sensitive to that, but you can't legislate it.

The fact is our industry's accident rates have gone down dramatically because our employers know that they simply cannot afford to have accidents and they try very hard to educate the people who work for them and they work hard and long with their unions to have programs that bring accidents down. They say that no one is any safer in the construction industry than the person working next to them.

CAD-7 has worked really well for us, and when you begin to introduce the audit system, particularly with relation to reinstatement, and begin to judge our employers on the basis of how they reinstate people under a system that doesn't recognize the peculiarities of our employment practices, then we've got a problem. You're taking apart something that works really well for us and saddling us with something.

Mr Offer: Mr Martin's question was the one that I was going to pose. I want to talk to you about the experience rating system and I want to tell you that from our hearings, people having difficulties with the act and its administration and all of those things, employers, injured workers alike, basically we hear that if there's anything that does work, it's the NEER and the CAD-7.

Mr Thomas: Yes. We're a little different than NEER because—

Mr Offer: Yes, the CAD-7 aspect. If there's anything that works, that's the one that works. Unanimously they come here and they say, "Don't change something that's working and reducing accidents wherever the place of employment happens to be."

My question is, because you spoke to the amendment that the government brought forward—and I think it was on the first or second day—I don't think that it in any way, shape or form responds to the concerns that we have heard, of your industry and of any employer, and I am wondering if you might share with us—and hopefully the government will listen, that we're talking about an aspect of the act that works, that has empirically a reduction of accidents—what the impact of this change might be to your industry.

Mr Thomas: A personal observation would be the audit process. When you begin to make decisions based on employers' response to a system, you seek to penalize and I think probably it's a grab at some money somehow. Obviously we've got money problems and you have to find it somehow. Why not let's just put CAD-7 down on everybody? I don't understand the need to audit when employers are being properly motivated without the audit in CAD-7. You haven't tried that with NEER.

Mr Offer: So you see this as the impact will be a reduction of rebate? They'll grab some money?

Mr Thomas: Oh sure. Yeah. The money that's being spent—lots and lots of programs in this industry get instituted with that money, and it flows back to the contractor and so on. It becomes a competitive advantage, even, with their competitors, to be safe. There are incredible motivations to be a safe employer in this industry, and that's just one of them.

Mr Offer: Okay. Thank you.

Mr David Johnson: I appreciate your deputation and

I think that perhaps we ignore the message that you've brought here today, and the mining association before you, at our own peril.

Interjections.

Mr David Johnson: I'd like to ignore the banter that's going on here. Mr Chairman, can we have some order?

The Vice-Chair: Can we please have order? Mr Offer, Mr Fletcher, Mr Johnson has the floor.

Mr David Johnson: Thank you, Mr Chairman.

You've made a number of points that really, as my first day on the committee, I find very appalling. The fact, for example—

Interjections.

Mr David Johnson: Mr Chairman.

The Vice-Chair: Mr Offer, are you done?

Mr David Johnson: Shall we give them another five minutes to go back and forth or whatever? Okay.

The cost of the premiums has increased by 361% from 1983 to the present, even though you've had your experience and your members have been very responsible that I read through your presentation and coming to grips with injuries which have diminished by some 4,000—I guess what's that, about a third?—over a period of 10 years or so, and yet the cost has gone up by five times. The mining association in their brief indicated that because of the intervention and the management and the administration of WCB has caused potential investors to avoid putting money in Ontario businesses, which I believe to be true, and that billions of dollars have gone south during this administration.

I wondered what the impact on your business would be. I don't know if it's quite the same, but I know that your people have to put a product in place at a cost that people can afford, and when the costs that go into it go up by 361% or five times, that it's more difficult for you and jobs are lost, I would guess.

Mr Thomas: I'm a little at a loss to comment, mostly because I think what you're alluding to, and I agree with it, is that this is a provincial thing, on a province-wide basis. There's no question that construction industry, economic investment has departed south of the border in the face of higher costs to do business in Ontario, and the reason that I hesitate is that because we happen locally to be doing really well right now with investment from northern Alberta, with investment from the United States, in the resource sector. So it hasn't deterred those people, but I think that's a whole other set of circumstances. It's resource-based with a high US dollar attracting those companies to do business in this country. So if there has been a disadvantage, it's been overcome by certain really narrow economic factors.

But there's no question in my mind that on a provincial or even a national basis, the costs to employ people discourage employers to have more employees, and if you want to walk right into the whole underground economy problem in contracting, from there you can. Yes, it's simply extremely expensive to have employees, and people are trying not to have them.

The Vice-Chair: Thank you. On behalf of this committee I'd like to thank the Sault Ste Marie Construction Association for their presentation to the committee this morning.

Mr Thomas: My pleasure.

The Vice-Chair: A reminder to the committee members: Because of the shortness of the lunch break, lunch will be in the room just out the door to the right. Check-out time is 1:00. This committee stands recessed till 1 pm.

The committee recessed from 1202 to 1311.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Vice-Chair: I'd like to call this committee back to order. Our first presenters for the afternoon aren't here so we'll be going with the second presenters first, the Ontario Public Service Employees Union, Local 607. Good afternoon and welcome to the committee. Just a reminder you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat briefer to allow time for questions and comments from each of the caucuses. Could you please identify yourself for the record and then proceed.

Mr Douglas Paolini: I'm Douglas Paolini from Local 528 of OPSEU. I'm the divisional president of the office of the worker adviser. To my right is Mr Glenn Sirois from Local 607 here in the Sault, a colleague of mine.

This brief will outline to the members of the standing committee our concerns on a number of specific sections of Bill 165.

OPSEU represents approximately 95,000 workers in Ontario and our members also represent the largest number of unorganized injured workers in the workers' compensation appeals system.

Today, we will address the following areas: jurisdiction, sections 8 and 65; mediation, section 72; the proposed \$200 for pensioners and the exemptions for general welfare assistance and family benefits assistance recipients, subsection 147(14).

Sections 8 and 65: jurisdiction and duplication of benefits. The new subsection is intended to prevent a worker from receiving workers' compensation benefits from more than one workers' compensation program for the same condition. However, this subsection is vague and, as a result, it ends up causing more problems than it solves. It does not make clear how to determine which jurisdiction is responsible for a claim although the Association of Workers' Compensation Boards of Canada recently negotiated an interjurisdictional agreement which should provide direction. The clause could be misinterpreted to include benefits a worker may be eligible to receive from the Canada Pension Plan or through a private disability plan such as is often purchased when arranging a car loan or a mortgage.

Another problem we see is the apportionment of benefits, particularly in the case of occupational diseases. For instance, in a hearing loss claim, a worker could receive a small hearing-loss claim in Alberta and then move to Ontario, be re-exposed to further damaging work noise causing further hearing loss and, under the current

wording in the proposed bill, be found not entitled.

As in section 8, the amendment to clause 65(3)(h) addresses the duplication of benefits. Section 65 is incorrectly worded. The board does not have the right to change benefit levels. As well, the current wording could put a workers' Canada Pension Plan or privately purchased disability insurance benefits in jeopardy.

Our recommendation: The subsection in section 8 should be amended to read, "No compensation is payable under this part to a worker or his or her dependant if he or she is receiving duplicate workers' compensation benefits under the law of another jurisdiction in respect of the accident."

The amendment to clause 65(3)(h) should read, "And addressing any duplication of workers' compensation benefits provided under this act."

Section 65 should read, "The board shall evaluate the consequences of any proposed change and entitlement, services, programs and policies to ensure that the purposes of this act are achieved."

Section 72 of the proposed act, mediation: The inclusion of this mediation section is surprising as it was not part of any PLMAC discussions nor had anyone practising in the workers' compensation system ever requested it. We believe that the inclusion of mediation, as outlined in section 72, is not helpful or realistic at this time for a number of reasons.

The board introduced some mediation services for reinstatement and fast-track rehabilitation appeals after Bill 162 came into effect. The experience of our members with mediation has been that it is only helpful in some limited cases of re-employment negotiations with pre-accident employers. It is not helpful in vocational rehabilitation cases.

We believe that many individuals may have a misunderstanding as to how mediation is done in the workers' compensation system versus labour relations forums. It should be noted that the board is limited by section 16 of the act which states that workers' rights cannot be waived. The act sets out only a limited obligation to re-employ the injured, subject to a relatively small financial penalty versus the right to re-employment and accommodation standards in accordance with the Ontario Human Rights Code.

Many of the issues listed in section 72 require the board to mediate unto itself when workers question vocational rehabilitation decisions. Fast-track rehabilitation disputes with board personnel where mediators have been involved have not been successful. Board mediators will contact vocational rehabilitation case workers and request if they would reconsider their decisions. Almost inevitably, the case workers say no and oral hearings are scheduled in front of hearings officers. Our experiences to date are that the most successful of all hearings for workers are vocational rehabilitation issues: an approximately 75% or better success rate depending on the specific issue.

If we wish vocational rehabilitation case workers to reconsider their decisions, we contact them directly. If we cannot have the decisions overturned, we simply request

the hearings. Frankly, what we need is better front-line vocational rehabilitation decision-making, not more appeal layering.

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The time limits for representatives would drastically tax already overtaxed representation systems. Many negotiations in these areas involve seeking further information, including vocational rehabilitation assessments, medical evidence and work site analysis and investigations. Many appeals can involve workers who have been unable to return to their pre-accident employer within one year of the accident date. In order to be represented within the 30-day time limit under this bill, immediate access to a representative is required. Such representatives are not always available and yet the worker requires representation due to the serious and often long-term impact on the workers of such decisions, such as formal retraining under board auspices and future-economic-loss awards.

We believe that the whole process of mediation and its impact on the appeal system has not been adequately studied and considered. We would submit that it is premature to entrench section 72 in the act without further discussion. We would urge that this whole area be reviewed by the upcoming royal commission. Our recommendation quite simply is to delete section 72 of the proposed bill.

Section 147, \$200 increases to pensioners: Monthly pensioners who are over 70 years of age are not eligible for subsection 147(4) supplements and were not considered when Bill 165 was drafted. These are workers on very small WCB pensions who turned 65 years of age prior to July 26, 1989, and they were never able to return to their work capacity after the injury. Their CPP contributions were minimal. They were made ineligible for subsection 147(4) supplements due to their age, yet they suffered very similar circumstances as those younger than they and had low pensions with very little indexing. Increasing the pensions by \$200 monthly for this vulnerable group would not cost a large amount, would be equitable and just and would be in keeping with the spirit of the introduction of this provision in the bill.

Our recommendation is as follows: Clause 147(14)(b) should be amended to read:

"If the worker would be entitled to a supplement under subsection (4) but for subsection (7);"

Or a new clause 147(14)(c) should be added:

"If the worker is in receipt of a permanent partial disability award under subsections 43(1) of the pre-1985 act or 45(1) of the pre-1989 act, and had reached the age of 65 before July 26, 1989."

Protection for general welfare assistance and family benefits assistance recipients eligible for the proposed \$200 increase: The Premier, Bob Rae, announced in the Legislature on April 14, 1994, that individuals who are eligible for the proposed \$200 increase and were also in receipt of general welfare assistance or family benefits assistance benefits would be given special consideration. These individual workers would not have the additional \$200 payment deducted from their GWA or FBA month-

ly benefits. However, we do not see any such language in the proposed bill to enshrine this commitment. We would ask that these exemptions be included in the bill as an additional subsection to the proposed subsection 147(14) and that any amendments required be made to the Family Benefits Act and General Welfare Assistance Act to ensure the protection of this group.

Our recommendations are twofold: Firstly, a new subsection should be added to 147(1), and secondly, the necessary amendments to the Family Benefits Act and general welfare assistance legislation should be made.

In conclusion, we wish to thank you for the opportunity to address the committee today. We have focused on certain areas of this bill which we believe need urgent attention, and they are:

—The clarification of the jurisdiction and duplication clause.

—Extended coverage of the \$200 increase to more older injured workers.

—Inclusion of language of exemptions for general welfare assistance and family benefits assistance recipients eligible for the proposed \$200 pension increase.

—And finally, the removal of the mediation section.

This is respectfully submitted on behalf of OPSEU by myself, Doug Paolini, and my colleague Glenn Sirois.

The Vice-Chair: Thank you. About two minutes each.

Mr Offer: Thank you for your presentation. You've brought forward some very interesting points. I don't know that my question is necessarily directed to yourself but I think that, certainly on two matters, we are going to need, through your presentation, a clarification by the government as to whether injured workers who are receiving 147(4) supplements could have them reduced by virtue of being under GWA or FBA.

Ms Murdock: No, there will be no clawback and it will be done through Comsoc.

Mr Offer: How does that happen without legislative change?

Mr Ferguson: It's already in the—

Ms Murdock: When they make the calculation—it's part of the regulations; it's not part of the legislation.

Mr Ferguson: It can't be clawed back.

Ms Murdock: In terms of what the deductions are going to be on entitlements under Comsoc?

Mr Offer: No. Let me be clear. I might end up just restating the point that you've made: that individual workers may be entitled to the 147(4) \$200. They may also have made application through either GWA or FBA. I believe it was the suggestion by the presenters that, by virtue of getting an extra \$200, it would affect their—

Ms Murdock: If I understood your question, Mr Offer, the entitlements section under Comsoc is not handled legislatively for the deductions and therefore it doesn't have to be handled legislatively to prevent a clawback. So those workers who would be receiving the \$200, there will be no clawback under Comsoc. Period.

Mr Offer: Okay, that has met your concern then?

Mr Paolini: It has.

Mr Offer: Thank you.

Mr Carr: Thank you very much for your presentation. Have you done any cost of what the changes would be, in terms of the overall cost to the system, if the recommendations that you put forward are implemented?

Mr Paolini: You're referring to the expansion of the \$200—

Mr Carr: The total cost. In there, you say that's not that great. The total cost of what you've called for in your presentation: any idea of what the cost would be?

Mr Paolini: My understanding is that there have been figures available on that and as I'm sure you're aware, Mr Carr, OPSEU is focusing on various areas of the new bill at each of our sessions. I don't want to spoil anyone's surprises, especially when I haven't got the brief in front of me, but that will be addressed in Ottawa, I believe, tomorrow.

Mr Carr: Just in regard to the overall unfunded liability: We heard here today from Sharon that it is in the depths and so on. I'm looking at the annual report. You can call it whatever you want, but the fact is we're paying out more than we're taking in.

You may not want to comment on this; it may come at a later date too. There are some people who have come forward and said we shouldn't be concerned at all with the unfunded liability; they don't believe it. I'm looking at the audited financial statement put out by this government which anybody who's had 101 accounting can look at and see. Would you like to comment on the unfunded liability? What should the government do about that, if anything?

Mr Paolini: I would only be interested in commenting to the extent that that will specifically be dealt with by my colleagues in Ottawa tomorrow.

Mr Ferguson: I want to thank you for appearing today. I just want to make a very brief comment about section 147, the \$200 increase to pensioners. You as well as many other previous deputants who have appeared before this committee have brought to this committee's attention, as well as the government's, a serious situation. I want to tell you today that that suggestion of yours is under active consideration and we certainly appreciate your bringing that to our attention.

Mr Paolini: Thank you. It's been our pleasure.

1330

The Vice-Chair: On behalf of his committee, I'd like to thank the Ontario Public Service Employees Union, Local 607 for their presentation to the committee this afternoon.

Mr Offer: I'd like some clarification. What was Mr Ferguson saying?

Mr Ferguson: On section 147? Page 5?

Mr Offer: Their point 4, on page 5. It's under active consideration by the government?

Mr Ferguson: It certainly is.

Interjections.

Mr Offer: No. I just wanted a clarification.

The Vice-Chair: Order, please.

Mr Mahoney: Does that fit into the Premier's statement about financial responsibility?

Mr Ferguson: Everything's under consideration.

The Vice-Chair: Order.

Is there somebody here from the Society of Injured Workers? Not yet.

SAULT STE MARIE AND DISTRICT
LABOUR COUNCIL

The Vice-Chair: Could I call forward the Sault Ste Marie and District Labour Council. Good afternoon and welcome to the committee. Just a reminder, you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat briefer to allow time for questions and comments from each of the caucuses. Could you please identify yourself for the record and then proceed.

Mr Dan Lewis: My name's Dan Lewis. I'm the vice-president of the Sault Ste Marie and District Labour Council.

We have seen past amendments to Ontario's workers' compensation system which have made additional problems for injured workers. Bill 162 is a perfect example of this, with its deeming process leaving injured workers unemployed.

Getting into some of the sections that we had some concern with: Under section 1, the purpose clause in the bill will hopefully give injured workers the benefit that's needed if it's the intent of the board of directors to use it as their guide in making fair policies.

Section 35: This change in the system is very important for spouses of deceased coworkers. Many of them have been denied benefits because of grieving the loss of their loved ones and going beyond the prior time limits. But I believe that this section should be amended to an extension of one year. Usually when somebody is grieving it would take a year, go through a birthday or Christmas or what have you.

Section 53: Bill 165 attempts to improve employment opportunities for injured workers, either with the accident employer or through a WCB-sponsored vocational rehabilitation program under section 53. Injured workers need a job, not just an extension of services which leaves them unemployed and without benefits and living in poverty.

Under section 54: Employers need to stop hurting their employees, and when they do they must accommodate the injured worker in any way possible. The bill must force re-employment of the injured worker and not allow employers to have unsafe workplaces.

Under section 147: This section will help some, but I believe it should be amended to include all injured workers receiving a pension from the board pre-1990, regardless whether they are in receipt of subsection 147(4). Many injured workers fell under the old acts and should be compensated under any new act. They are the most in need.

Section 148: In regard to the Friedland formula, we cannot accept any reduction in benefits. The workers' compensation system was designed for injured employees without income as a result of being injured on the job.

The permanent disability they suffer is a loss of part of their lives. The amount of their pensions is usually low and needs to be fully indexed.

My pension, as an example, was rated at 12%, which gave me \$154.31 per month in 1988. Six years later in 1994, that indexing increased my pension to \$191.43. This increase amounts to \$37.12 per month, and I'm not getting rich off of it. Bill 165 must be amended to remove the 4% cap so that injured workers can have pensions that keep up with inflation.

Many other parts of this bill need to have clarification, but I feel these are some of our main concerns that I have spoken on today. I would like to thank the committee for allowing me the time to present the views of the Sault Ste Marie and District Labour Council, and I will entertain any questions.

Mr David Johnson: My first question, after thanking you for your deputation, would be: Does the labour council support the bill the way it is today if the bill comes back to the House? The way it is today, if you were to cast a vote, would it be yea or nay?

Mr Lewis: I can't speak for all the whole labour council affiliates but I can say that we are interested in Bill 165 with some amendments. We need a change to the compensation act. We've seen what's happened over the years as well as the introduction of Bill 162, where injured workers were still being left out, without incomes or without jobs. So I would say, with amendments, we would like to see Bill 165 go ahead.

Mr David Johnson: I appreciate "with amendments," because probably everybody has made deputations with the proper number of amendments; some of them would be about 100 amendments, I guess. But quite often bills do not get amended and they come back exactly the way you see them today, at least in substantive nature. In that case, if it came back the way it is with the Friedland formula, for example, still there, would you and your organization support that or oppose that?

Mr Lewis: I would say that we would have to support Bill 165 even though we do have some concerns about the bill. There are some sections of the bill that are forging ahead as far as trying to correct some of the problems with the system and hopefully we can negotiate down the road to improve the compensation act again.

Mr David Johnson: One of the concerns that we've heard and one of the concerns I must say that I share is with regard to the unfunded liability, and that is an obligation to pay. Now, you can call it a deficit or you can call it whatever you want but there's an obligation to pay out money to injured workers beyond the capacity that the system has today. I guess some would say, "Well, by charging down the road, that money will appear," but the unfunded liability is growing and there's grave concern. Obviously, you've heard it from some of the deputants this morning that this is going to be a problem for the injured workers in the future, that the system may simply may not be able to generate the money that's required; to put the assessment up for employers will strangle them and will likely cause some businesses to go under or to reduce jobs, and I don't think any of us want to see that.

You've called upon the elimination of the Friedland formula, you've called upon the extension of the \$200 increase. I'm just wondering, where are we going to get this money from? Do you see the assessment going up to employers or do you see the unfunded liability continuing to grow? Where is the money going to come from?

Mr Lewis: What I see if this bill goes ahead and improves the rehabilitation services for employees to return to the pre-accident workplace, I see a lot of money being saved there. I can refer to what's going on at Algoma Steel Inc. I've been involved as far as trying to return injured workers to the steel plant. In November of 1993 we had 236 people on WCB. Today we have under 90 and we're still plugging away. Algoma Steel received a rebate of \$1.76 million.

Those are the kinds of things that we've got to do if we're going to reduce the unfunded liability. Employers have to re-employ, and I think that's the bottom line, and that's where the dollars could be saved.

1340

Mr David Johnson: We certainly hope that people will have jobs. It's an unfortunate fact that in Ontario today there are fewer people employed than there were in 1990. But notwithstanding that, we've seen from the construction association this morning that the number of cases, injuries, have declined by about 30% in the last 10 years; from the mining association, their number of injuries have gone down, and yet the cost of the system—for example, the construction association has indicated that the cost of the average case has gone up from, let's see, \$10,000 in 1982 to \$55,000 just recently. So the cost continues to climb even though the number of injuries has gone down fairly considerably. Apparently, both of those industries have been very responsible in terms of reducing the number of injuries.

Perhaps we all hope that the injuries will continue to go down, but obviously there's a cost in here that's still buoying this system up. I don't think that just a reduction in injuries is going to result in the balancing of the system financially. Where, beyond that, are we going to get the money to pay the injured workers who need the support?

Mr Lewis: I would hope not out of the pocket of the injured worker, because that's what the compensation system was all about, to support the injured worker when he had a workplace injury.

Again, as my example with Algoma Steel, we've done things radically different there and injured workers are returning to work; they're not suffering; they're returning to meaningful, suitable jobs. If that's where the dollars can be saved through the board as far as getting employers to re-employ injured workers, then maybe that's the route to go. I don't have all the answers as far as how, but the injured worker shouldn't have to suffer because of it.

Ms Murdock: Just to continue on that point too, the fact is that in returning the injured worker to work the company sees a dramatic decrease in accidents and, as a consequence, then sees a decrease in their Workers' Compensation Board premiums so that there are savings

to the company and savings to the Workers' Compensation Board at the same time.

My question goes to your section on page 2 in regard to section 148, and it's really to you as an injured worker rather than you as the president of the labour council. Since you raised it I wanted to ask you: We've had some presenters suggest that if you've injured yourself and you've gotten a pension and you end up getting a job where you're being paid equal to or better than you were when you were injured, should you then be receiving a pension? I would like your comments and views on that.

Mr Lewis: Again, I receive the 12% pension. I also have basically an artificial knee, artificial ligaments. I can't play with my children like I could before I had my accident. There are a lot of things I can't do. I can't participate in sports any more. If nothing else, the pension compensates me for loss of enjoyment of life. It certainly isn't an amount of money that is going to make me rich. I don't even consider it enough compensation for the disability I have, but so be it; that's the amount that I get.

I think an injured worker deserves to be compensated for lost time, and he deserves to be compensated for the loss of enjoyment of life too.

Ms Murdock: You mentioned mandatory re-employment on page 2 as well, basically; you didn't call it that way. They "must force re-employment of the injured worker," but it's basically mandatory re-employment. How do you see that working, particularly in small business?

Mr Lewis: We've seen over the years where employers have skirted the issue of the reinstatement of injured employees, and we need to put something in place that says, "This is the law," not, "The injured worker has a time limit to apply to the reinstatement branch." We need employers to know that we're serious and the act says that you're going to have to try and re-employ to the best of your ability. Give it an honest effort.

Ms Murdock: I know that Mr Martin wanted to ask a question.

Mr Martin: I want to, first of all, say, Dan, thanks for coming forward and to let the people around the table know of your long and intimate involvement in this whole issue, not only your own personal situation but the work that you do on behalf of people dealing with compensation through the Steelworkers and that you certainly bring a very intimate knowledge of this to this table. Your contribution is very valuable.

You touch on two things that are key, in my mind, one of them being the section that's going to hopefully improve the opportunity for workers who are injured to get back into the workplace and you used the very, I think, valuable example of Algoma Steel who has in fact done that. The piece that concerns me as it does you, and certainly others who have come before us today, is the question of the Friedland formula, and it's problematic. I don't think anybody here, particularly on this side of the table, would tell you that we don't do this with some chagrin.

Certainly the red flag that's causing it is this unfunded

liability question, and you know some have likened that whole thing to having a mortgage with money in the bank kind of thing, and perhaps it's not as critical as we all see it, but it is driving this—perceived or real, it's driving a lot of why we're here today as well as the fact that you and I know the thing needed to be fixed in the first place. It was broken. Any comment on the unfunded liability, Dan?

Mr Lewis: I can only reiterate the fact that if employers can re-employ, then the board isn't forced to be putting out all that extra money for voc rehab services, or the employee goes back to the company, and the company doesn't have to look at the surcharges. They get their annual assessment, and all they have to deal with is an annual assessment, then everybody's going to be happy. Their money's going to be saved by both the employer and the WCB. I believe in our industry, for every dollar that's put out on a compensation claim to an injured worker, it costs Algoma Steel or steel \$5.23.

Mr Mahoney: Your section 1 on the purpose clause, I assume what you're saying here is you like it fine the way it is and you would not like to see an addition that would include financial responsibility. Is that fair?

Mr Lewis: What I see in section 1 is, as I've worded it, if the intent of the board of directors is to use this purpose clause to have fair policies introduced, then great; no problem.

Mr Mahoney: So you would not like to see financial responsibility added to the purpose clause?

Mr Lewis: Financial responsibility in which way?

Mr Mahoney: Well, the PLMAC agreement said that there would be financial responsibility, that the board shall act in a financially responsible way. Word it any way you want; that sort of the message was supposed to be in the purpose clause. Business has come before this committee and expressed serious concern, because when you interpret other sections later on in the act, or when WCAT makes a decision or whatever, there is no requirement—for example, subsection 15(3.2), on page 5 of this bill: "The board shall evaluate the consequences of any proposed change in benefits, services, programs and policies to ensure that the purposes of this act are achieved." If you then go back to the purpose clause, there is no requirement in evaluating the consequences of those changes in benefits, services, programs and policies to take into account financial responsibility.

1350

That's the nub of what business is concerned about. What the board's powers are to interpret certain things, such as expanding coverage, such as perhaps expanding compensable items, adding stress, there is no responsibility under the purpose clause to show any kind of financial responsibility, and my question is, since you like the purpose clause the way it is, which deals strictly with benefits and services, then I'm assuming you would be opposed to financial responsibility being added to the purpose clause. If not, fine.

Mr Lewis: As long as the bipartite board is going to be set up, it should be their responsibility to make sure that the policies are in place that cover that exact issue,

as far as where the money is being put out and why and how. Possibly the royal commission once it gets going will identify some other problems that have to be addressed. I don't see the need of having that in the—

Mr Mahoney: Okay. So you would not want it in there. There is a statement about financial responsibility later in the bill, subsection 58(1) I think it is, that says the board shall act in a responsible manner financially, but it's how you interpret these other sections that relate back to the purpose clause that has people concerned. I am assuming, if you don't see the need for financial responsibility to be in the purpose clause, you would hope that the Premier's letter of April 21, wherein he assured the chairman of the Employers' Council on Workers' Compensation that a purpose clause "will be added to the Workers' Compensation Act which will ensure that the WCB provides its services in a context of financial responsibility"—that's the Premier's letter, his words four months ago—I am assuming that you would hope that the Premier will not live up to that commitment.

Mr Lewis: I think the compensation board has to be accountable for the moneys that go out. I don't really know if there is a definite need to have that in the purpose clause like you say.

Mr Mahoney: You hope the Premier wouldn't live up to his statement, that he's going to put it in the purpose clause.

Mr Ferguson: Mr Chair, I think he's answered the question.

Mr Fletcher: You're putting words in his mouth.

Mr Mahoney: Well, come on, the Premier says—I mean, this is really pretty fundamental, as far as I'm concerned. The Premier says a purpose clause will be added that will include financial responsibility. The district labour council does not want that in the purpose clause. My question is, I assume you would then hope that the Premier would not live up to the commitment he made on April 21 of this year. Anyway, I think I made my point.

The Vice-Chair: Thank you, Mr Mahoney.

Mr Mahoney: Is that it, five minutes?

The Vice-Chair: That's five minutes.

Interjections.

The Vice-Chair: Order, please. On behalf of this committee, I'd like to thank the Sault Ste Marie and District Labour Council for bringing their presentation to this committee this afternoon.

GERALD ZUK

The Vice-Chair: I'd like to call forward our next presenter, Gerald Zuk. Good afternoon and welcome to the committee. Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat briefer than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourself for the record and then proceed.

Mr Gerald Zuk: You can call me either Gerald Zuk

or claim 9241082, one of the workers who will be shafted if this bill becomes law. I am an injured worker who would be affected if Bill 165 becomes law. I receive a 58% pension for the loss of my leg as a result of a work injury that occurred in 1972. Now I am being threatened with the loss of my inflation protection. Also, I won't qualify for the proposed \$200 increase. The reason I won't is that I chose to get on with my life and return to work after a serious work injury.

I feel so strongly about how Bill 165 discriminates against injured workers who've taken the initiative to return to work after a serious work injury that I'm making submissions to this committee about this bill.

Normally, I don't care about politicians or politics, but in this case, I'm making an exception. If I had one recommendation to make to this committee it would be that Bill 165 be scrapped, that Bill 162 be repealed and that the Bill 101 act be resurrected.

I want to acknowledge at the outset that I am more fortunate than injured workers with serious disabilities who fall under the Bill 162 act, because they haven't even been fairly compensated for their serious disabilities, but adding to the inequities that already exist in the system isn't serving justice at all.

There are four areas I'd like to cover. First of all, I'd like to comment a bit on the process; secondly, I'd like to make a few general observations about the bill and workers' compensation generally; thirdly, I'd like to address a couple of specific sections of the bill, and fourthly, I'd like to comment briefly on the unfunded liability. Unfortunately, because of time constraints, I can't deal with this as thoroughly as I'd like.

As for the Bill 165 process, basically a couple of things I'd say about this is, number one, it was wrong for injured workers to be excluded from this process. In any other area of government, when negotiations take place under the auspices of government, the affected parties are given an opportunity to participate in the negotiations, but in this case injured workers were excluded. That's wrong. Not only is it wrong, it's an insult to injured workers. It's an insult to assume that we're incapable of speaking for ourselves.

As for the labour representatives on the PLMAC or RAESCREWIW, whatever you want to call it, to me, with all due respect, they're hypocritical. If the same kind of process was imposed on a union as is being imposed on the injured workers, organized labour would scream from every hill, valley and mountaintop about the injustice of it all. But here they are cooperating in the same kind of process that they themselves would condemn if it was imposed on one of their own. So that's all I'll say about the process.

As for the bill itself, some general observations: First, again, if the process was wrong, the bill is fundamentally flawed.

Secondly, it's legally and morally wrong for the government to deal with problems in the system at the expense of the injured workers who have the initiative to return to work. I'm going to be elaborating on this if I have time.

Thirdly, it's important not to lose sight of what workers' compensation is and why it was established, because when that's lost sight of, the system becomes unfair and problems in the system become exacerbated. Workers' compensation is to compensate injured workers for their occupational injuries and diseases; nothing else. It's not to compensate you for lack of transferable skills or lack of education or lack of other barriers to employment; it's to compensate you for the damage to your body.

The other thing about workers' compensation is that it was established as an alternative to workers suing employers for their occupational injuries and diseases. In return for giving up the right to sue, they are guaranteed compensation. But Bill 165, like Bill 162, loses sight of that. It proposes to give additional compensation to people for personal attributes which serve as barriers to re-employment and it does this at the expense of other people who've had the initiative to return to work.

A final fault I find with Bill 165 generally—I find lots of specific faults with it, but in a general sort of way, just like Bill 162, it appears not to recognize that there are other income support systems in place to assist with the problem of someone who's unemployable because of an occupational injury or disease that wouldn't make someone else unemployable.

Those are the general observations I would make about it. Now to deal with the specific sections of it.

A purpose clause is there. I support that, but I would have a couple of addendums to it, or addenda, whatever the term is.

1400

If compensation is paid, it should be based on the nature and degree of the injury or occupational disease.

A second addendum I would make about it is that a lot of employer representatives would probably say that there should be a financial responsibility clause or section. Well, that's fine, but let's have a qualification to that: that if financial responsibility is to be exercised, it's not at the expense of anybody who's had the initiative to return to work.

The other specific section I'll mention is governance of it. Yes, I support a bipartite board of directors, but I say keep the politicians off it. Keep the compensation board politically independent so it's not at the whim of whatever is expedient and opportunistic for the politicians. Also, let's have injured worker representation on the board of directors. They're the ones most affected by it.

Re-employment: I'll skip that.

Let me deal with the \$200 increase, and I said in my opening remarks that it's morally wrong and legally wrong to give some workers an increase but not others. I'll deal with the legal aspects of that first.

The pre-Bill 162 act always provided that in any case of permanent disability, the impairment of earning capacity, ie, the pension, was to be estimated from the nature and degree of the injury, but what Bill 165 does is estimate the impairment of earning capacity on the basis of the worker's employment status. Based on a plain reading of it, that's wrong.

Also, if you give some injured workers an increase and not others, that's contrary to the fairness clause, because how is it fair that if two workers have identical disabilities resulting from work injuries, one should get more money than the other for that disability? The reason the one would get more than the other is that the one who gets less has made the effort to get re-established in the workforce.

That's bad enough, but if this fiasco goes through, some people with lesser disabilities are going to get more money for those disabilities than some people with more serious disabilities. How is that fair?

I don't understand how it's fair, probably because it isn't fair, and that's how it looks legalistically, but I wouldn't sink or swim on any legal challenge to this because whenever the law is twisted around or there's some legal nitpicking, it's never to the advantage of the ordinary law-abiding working person.

You can go out and rape and kill a few people and all the forces of the law will be on your side and the freedom of the press will go out the window, but if you're an ordinary injured worker, the law probably isn't going to be on your side.

That's what I say about it legally. Morally, fairness enters into it. I'll just elaborate a bit on the fairness. I'm running out of time here.

What this bill means in practical terms is that the injured workers with serious disabilities who return to work are expected to make a sacrifice to pay for not only the failure of the government and the board to maintain its financial viability, but also make a sacrifice for other workers who didn't return to work. How is that fair? We're not responsible for the financial problems of the compensation board. We're not responsible for the failures of the government. So don't put it on us to solve these problems.

I look at this from another moral standpoint. Any pre-Bill 162 pension was given to the worker for the damage to his or her body from a work injury or disease. All kinds of inferences are drawn about that, but ultimately the money you get is for the damage to your body. But what Bill 165 is saying is that if you return to work, the damage to your body is worth less than the damage to the body of somebody who didn't return to work. That's discrimination of the worst sort.

It's really amazing. This government goes looking under chairs and would look under the curtains of this table to find discrimination against some other group, but somehow it's okay to discriminate against injured workers with serious disabilities who return to work. Look at where the real discrimination is, or is going to be.

I would recommend to comply with the legal requirements of the act. You know, you comply with the legal requirements of whatever arcane law that ever is for somebody who's done some terrible crime; you make sure that the legal requirements are followed to a T. Well, follow the legal requirements for the injured workers. So to comply with the legal and moral—some moral standards; morals seem to go out the window with politics a

lot of the time. Either let every pensioner or no pensioner be given an increase, and if an increase is given, let that increase be commensurate with the worker's clinical disability rating.

Now I'd like to deal with this so-called Friedland formula. It's funny how some guy named Friedland—we don't know who he is, where he comes from, whatever, but he's going to impact on our lives and we don't have a right to challenge him on it. So be it. What I said about the \$200 increase for some workers and not for others applies with modifications to this so-called Friedland formula.

There have been studies piled upon studies of injured workers of the workers' compensation system. Never ask an injured worker to participate in the study; ask some professor, ask some politician, ask some union official, ask everybody else except the people most affected. But even Weiler in his report—he's a professor and he wouldn't know what it's like to get his hands dirty, more than likely—said that it should be enshrined in the act; it's a right of injured workers to have their pensions inflation-protected. So what he said should apply.

But again, we get this triple whammy with this Bill 165. We get the loss of the inflation protection, we get an exacerbation of the discrimination against workers who've returned to work and we get a decrease in pensions in terms of purchasing power.

The last area I'd like to cover very briefly is the unfunded liability. Of course, it seems that what this bill is trying to do is deal with this problem at the expense of the workers with serious disabilities who return to work.

Let's take a look at other ways to deal with it. First, we need to have an examination of how this liability came to be, and we can avoid the kinds of actions or lack thereof that contributed to it.

Secondly, we can look at the area of employer assessments.

Thirdly, a lot of the unfunded liability is due to these fly-by-night employers who didn't stay in business long enough to even remotely cover a part of the cost of their claims, and yet the other employers are being asked to bear the burden of it. Maybe the government ought to take a look at how fair that is to other employers. This probably would go over like a lead balloon with the government because it can't meet its existing obligations, but when you read these horror stories of how the government spends its money, there could be a lot worse expenditures.

Fourthly, with regard to assessments, certainly there's a case to be made for employers who haven't been in business very long to pay a higher rate of assessment than well-established employers—something like car insurance; if you haven't been driving very long, then you have to pay a higher premium.

The other recommendation I'd make with respect to the unfunded liability is, remove the exemption in the act that enables the banks and financial institutions and certain other employers not to be covered for compensation. It's really amazing: The banks are the country's richest employers and here we have a quasi-socialist

government which purports to be the champion of the ordinary working people, but when there's a financial problem affecting an organization which exists to serve workers, who does this socialist government attack? Not the banks, not the ones who can afford to pay. It attacks the ordinary working person whose cause it purports to champion. I say keep partisan politics out of this, but it is so hypocritical of this government. That's the only way to put it in a diplomatic way. Privately, I'd put it another way.

1410

The Vice-Chair: If I may interrupt, you have about two minutes left.

Mr Zuk: Then I'll just forgo my two minutes.

The Vice-Chair: Thank you. Ms Murdock.

Ms Murdock: Actually, it's probably good that we ended up there. I know that's going to be addressed by the royal commission.

But on that very point, there are 7,000 employees not covered under those areas: banks, trust companies and so on. Those companies indeed would be paying workers' compensation premiums, there's no doubt, but they would also then be unbalanced, I would say, in terms of the number of accidents, particularly in a day and age when you've got computers and you've got repetitive strain injuries in those kinds of workplaces to a higher degree than in a lot of others. So to make a blanket statement that you're going to get all this money into the system that's going to suddenly help out in the unfunded liability, I don't think I agree with you.

Mr Zuk: I totally disagree with you, because if the assessments were fair, there would be some kind of retroactivity involved. The banks benefitted by the fact that workers in other industries were covered. The fortunes of the banks relate to the fortunes of other companies, so to the extent that other companies benefitted by workers' compensation coverage, why shouldn't the banks have to pay a portion of that?

Mr Mahoney: The hypocrisy that you refer to that this government has shown, I wonder what your reaction is to the Ontario Federation of Labour, to many of the large unions that have come before us.

We had one of the auto worker locals in London say they strenuously objected to 17 of the clauses in the bill, wanted them either deleted, amended or whatever. My question to them was, "If you don't get your amendments, 17 of them, bearing in mind that there are 36 clauses in the bill and 11 of them are housekeeping, so that leaves 25 substantive clauses"—they're opposed to 17 of them; ergo, they support 8 of them—"If you don't get these changes, do you still want the bill passed?" And they said, "Yes." Astounding. I wonder if you think maybe hypocrisy has run amok not only in the government but in some sections of organized labour in the Ontario Federation of Labour.

Mr Zuk: I say to anybody who purports to support the cause of injured workers, if the interests of injured workers clash with the interests of organized labour or clash with the interests of the government or politicians or whatever, if your first loyalties are to the politicians or

to organized labour or to whatever, don't pass yourself off as an advocate for injured workers, because not only it is dishonest, it's a disservice to injured workers.

Mr Carr: This is my second trip up here in a couple of weeks and I appreciate the opportunity of coming through here. On my last trip, it's funny, we talked about Bill 162, and some of the Liberals were telling us how when they were in government the NDP went around, they had balloons for injured workers, they had coffins brought in. I think it was Shelley Martel who went around and stirred people up. If you'd told anybody that this bill would be introduced by an NDP government and told them what would be in it, they would be literally climbing the ceilings. They'd be swinging off the chandeliers in disgust like they were on Bill 162.

You said that the injured workers weren't even consulted. I can't believe that in spite of what the government may do in the end with this bill, after all the rhetoric and the games that were played on 162, it didn't have the decency to consult with injured workers. Could you expand on that? There were no injured workers consulted at all on this bill?

Mr Zuk: Injured workers weren't involved in the process that led up to the creation of this bill. Obviously we're going through this charade now. Maybe it's not a charade; maybe it will be taken seriously, but I doubt it. It's a done deal, it appears.

Mr Ferguson: No, it's not.

Mr Zuk: But why weren't they part of the process? To me, the whole bunch of politicians is hypocritical about this. The Liberals are hypocritical because Bill 162 was supposed to solve all the problems, that's what the minister at the time said, but of course the problems weren't all solved. The NDP was against Bill 162 and they did as you say. They had four years to repeal it, but instead of repealing it, after we were down they gave us a little kick in the you-know-where. The Conservatives? Well, probably if they're elected they'll shaft us even worse. But to give them their due, they make no bones about it.

The Vice-Chair: Mr Zuk, on behalf of this committee I'd like to thank you for bringing us your presentation this afternoon.

Mr Offer: Mr Chair, as the next presenters are coming up, I'm wondering, since we've now heard that extension of section 147 is under active consideration—

Mr Ferguson: Mr Chair—

Mr Offer: No, no. I have the right to ask a question.

Mr Ferguson: All parts of the bill are under active consideration. That's why we're going through this.

Mrs Joan M. Fawcett (Northumberland): You're going to change everything?

Mr Ferguson: I explained that last week, I'll explain it again this week and I'll repeat it next week.

Mr Offer: Mr Chair—

The Vice-Chair: Order, order.

Mrs Fawcett: If you're going to change everything, then you might just as well withdraw it and start over again.

Mr Offer: On a point of order, Mr Chair: Before Mr Ferguson climbs the walls to the ceiling, maybe he could listen to the last part of my request, and that is that I would like the ministry to provide, if this active consideration in fact came to fruition, what effect or impact that might have on the current financial status of the workers' compensation system. I hope that meets with Mr Ferguson's approval.

The Vice-Chair: I'm sure the ministry will be able to provide that for you, Mr Offer.

CANADIAN UNION OF PUBLIC EMPLOYEES,
LOCAL 1880

The Acting Chair: Good afternoon. I understand you're from the Canadian Union of Public Employees, the area office. If you could introduce yourself for the sake of Hansard and for the members of the panel, and also try to leave some time at the end of your presentation for some questions and comments from the panel.

Ms Cora-Lee Skanes: Certainly. My name is Cora-Lee Skanes and I'm here representing the Canadian Union of Public Employees. As well as being president for Local 1880, I am also a worker representative, in which capacity I handle appeals for injured workers.

The number one problem facing injured workers in the province of Ontario is that of living in poverty. Too many of these workers require social assistance benefits in order to survive. Forty per cent of injured workers in Canada are currently unemployed.

More focus needs to be placed on health and safety issues. Although the experience rating program addresses this issue, we need to be very clear with our message that the employer must provide a safe and healthy workplace. This must include violence in the workplace. In a recent CUPE survey, 61.2% of the respondents had been subjected to an aggressive act during the previous two years, and 55% of those had been subjected to three or more aggressive acts during the same period of time; 28.2% of the workers surveyed had witnessed more than seven acts of aggression against workers.

This is totally unacceptable. Employers have policies dealing with aggression by workers towards clients but do not appear to be very concerned about aggression by clients towards workers. This issue must clearly be addressed if our goal is to have fewer injured workers.

The best way to cut benefit costs is by not only preventing injuries but also getting injured workers back to work as soon as possible. Injured workers themselves will tell you that the longer workers with disabilities are away from the workplace, the less likely they are to return.

Although the strengthened and streamlined return-to-work programs will address this issue, they don't go far enough. Uncooperative employers across the province appear to be more willing to pay the fines and penalties than they are to get the injured workers back to work. This must be dealt with very strongly.

We are also concerned that subsection 51(2) gives the employer access to medical information. This access should be contingent on the employer providing a cooperative, approved return-to-work program. Subsec-

tions 53(10) and (13) clearly do not address an uncooperative employer's role. In our opinion, if an employer is not cooperating in the process, then he should not be involved in the program.

The definition of "compensation" in subsection 8(7.1) needs to be clearly defined. Does this include private disability insurance or Canada pension? It is unclear.

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There is also a small group of workers currently over the age of 70 who are not included in clause 147(14)(b), and this should be addressed as well.

We are encouraged to see the implementation of a bipartite board of directors. Workers need more input into the system, for after all, they are the people who will be using it. The present system needs to be far more user friendly.

The Weiler report has estimated that 6,000 workers die every year in our province from occupational disease. We need changes and we need them quickly. Too many disabled workers are living in poverty. Too many Ontario workers, an estimated 700,000, are not even covered by the Workers' Compensation Act.

Hopefully, the royal commission will address the serious issues of coverage, entitlement, occupational disease, benefit levels and indexing, and we look forward to assisting it in any way possible.

I wish to thank you for this opportunity to present our views to the committee, and I have submitted a technical description of the actual amendments to the bill that we are supporting. I'm prepared at this time to answer any questions you may have.

The Acting Chair: Thank you very much for your presentation. Mr Mahoney.

Mr Mahoney: Thank you very much. Your last point about the 700,000 workers who are not covered: The insurance companies and the banks will say to you that they already provide coverage through private insurance that is far superior coverage to that of WCB for their employees. They say, "Leave us alone, thank you very much." I can kind of understand why they don't want to get caught in the mess that the compensation system has become in Ontario.

There is also a study that's been done actuarially that shows that the rate grouping for these workers would be in around the 25-cents-per-\$100 range and that the claims would be substantially higher. Therefore, ultimately, they would be a burden on the system.

Now, I suppose you can get a study to show you anything you want, depending on your perspective, and I accept that, but my question to you would be: If it was shown that these workers are indeed going to turn out to be a cost burden to the Ontario workers' compensation system, would you still want them included?

Ms Skanes: I think probably we can look at the fact that you're saying that their insurance is far superior to what they get under workers' comp—

Mr Mahoney: No, they're saying it. That's what they told me, that the banks and the insurance companies provide private compensation for injuries. Bear in mind

that many of the injuries would be the carpal tunnel, the repetitive strain, the soft tissue and that type of thing. You wouldn't have as many back problems from lifting or those types of injuries. You wouldn't have, necessarily, broken arms. It would be a lower—I wouldn't call it a lower level, because they're quite serious, but it would be an injury that would occur from working in that type of workplace.

They claim that they provide far superior coverage. I haven't seen that disputed anywhere either. We haven't had any of those employees coming forward saying, "We want workers' compensation coverage," which is interesting. We have unions saying they should be brought in, organized labour saying they should be brought in. I did an outreach tour for three months that went across Canada, as well as to eight different cities in Ontario. Not once did we have a worker from a bank or an insurance company come before us to say, "Please include us in the compensation system."

Ms Skanes: I would imagine my point would be that if they're getting far superior coverage, at what cost to the other employees, the other workers in the province? If everybody was covered under the Workers' Compensation Act, then the burden or the cost could be shared equally by everybody and we could get everybody a fair system.

Mr Mahoney: In fact, I thought that as well at the beginning of the tour that I went on, and on the surface that certainly seems valid. The studies, however, in the industry would show that there's a very real possibility, with a 25-cent rate grouping—and you can't just automatically bump them into \$3; they'd challenge that and you'd be in trouble—these companies will wind up being a cost burden due to the nature of the types of injuries we're seeing in business today and the increase in those injuries.

My question to you was, if in fact it is a cost burden to the compensation system—because there are two issues; there's the economic issue and there's the justice issue, I suppose—do you still want them included?

Ms Skanes: Well, it shouldn't be a cost burden and their assessment should reflect the injury rate. If their injuries are higher, and in my brief I talk about the health and safety issues, the ergonomics of the jobs should be changed then so that those injuries don't happen.

Mr Mahoney: I guess in a perfect world there's a lot of things that should be. The indication to me was, and in fact in my report one of the things I recommended was that they not be brought in at this time, until we answer those very serious questions about where you would put them in a rate grouping, the premiums they would pay and the potential impact on the system. Because I would submit to you that the last thing in the world we need is something that's going to cost the compensation system more money and therefore create an even greater burden for injured workers.

You talk about subsection 51(2) and the medical information and making it "contingent on the employer providing a cooperative, approved return-to-work program." What about designing a system that more clearly deals with uncooperative employers, employers who are

not only uncooperative after the injury but uncooperative in implementing proper health and safety programs before the injury occurs in an attempt to avoid the injury? Instead of treating everybody with a broad brush—we've heard stories of how good a job Algoma has done here in the Sault and we've heard other stories where examples can be given—would it not make more sense to set up a system that was punitive to employers who are proven bad—obviously you'd have to give them an appeal mechanism of some kind—and reward employers who are showing good results, and base it on results rather than subjective viewpoints of somebody coming in?

Ms Skanes: I wouldn't have a problem with that except that the bad employers would then pay the penalties and there would be no changes to the workplace. So your injured workers would still be injured. There would have to be a mechanism to force them to make the changes that should be made.

Mr David Johnson: Thank you for your presentation today. This is my first day on this particular committee and I've been puzzled by the fact that the injured workers who have come in—and the deputant before you, I'm sure you heard—have been expressing extreme displeasure with the bill. It's a little puzzling to me and I wonder if you would comment on it.

It seems that when the injured workers are here they're not the least bit supportive of the bill, and yet the unions that come before us, reluctantly I think—and you've expressed your support, but right at the end of your brief. Other union representatives who have come before us have not even expressed support until asked the question. Doesn't this give you pause to think that perhaps there's something wrong here when we hear from the workers who are not in support of this and the union representatives seem to be very reluctantly supporting the bill?

Ms Skanes: Mr Mahoney spoke about a perfect world. In a perfect world, we'd like all the changes that I have attached to my brief, but this is at least a start. What is the alternative if this bill doesn't go through? There are some improvements here and we need to start somewhere. That's why we're supporting it. Although we would like to see changes made to it, there are some improvements here that will benefit the injured workers.

Mr David Johnson: You mention you're supportive of a bipartite board of directors. The bill mentions that four directors should be representative of workers. Some of the injured workers who have come forward today say that injured workers should be accommodated on the board. Would you support a situation where some of the four directors would not necessarily be union representatives but would be individuals representing injured workers?

1430

Ms Skanes: I think you need injured workers represented, yes. That was my interpretation: The workers' representatives would also include some injured workers in that.

Mr David Johnson: I'm not so sure, because there seems to be more union support for this than there does injured worker support.

You've mentioned the fact right off the top that the main problem is people living in poverty, and I'm sure that's a concern we all share. The question is, I guess, where is the money coming from to assist those who need the help? It seems to me, in going through your presentation, that basically you rely on enlarging the system to bring more workers in and perhaps more revenue in. Is that how you feel, that there's going to be more money to assist those who need it? Where is the money going to come from to assist the injured workers?

Ms Skanes: I would say that the employers bear the burden through the assessments. If the employers are assessed too low, then the assessments need to be higher, and that might well address some of the issues of cleaning up the workplaces so that injuries don't happen.

Mr David Johnson: The information I have is that in Ontario we have the highest assessment of all the provinces. Newfoundland is about the same, a little bit under Ontario. But bar that—

Mr Carr: Double BC.

Mr David Johnson: —I'm hearing "double BC," and all the other provinces are noticeably lower. Certainly when you talk to the business community, there's no question that it's a disincentive to set up a business in the province of Ontario, not only the workers' compensation premiums but other payroll costs and other taxes and that sort of thing.

Does it not concern you that if we keep jacking up the workers' compensation premiums and business does not set up in Ontario—and there's no question it's a disincentive—that jobs are going to be lost, and not only jobs that exist today? As a representative of a union, you must be very concerned about the number of jobs in the province of Ontario and the fact that we have fewer people employed today than in 1990. Are you not concerned that by continuing to put up the assessments we'll have fewer jobs?

Ms Skanes: Definitely that is a concern. My question would be, if the assessments are higher, I'd be interested in seeing the ratio of injuries. The injuries are probably much greater too. Again, the employers need to clean up their workplaces so the injuries don't happen.

When I talked earlier about the penalties to employers who don't return workers to work or who don't clean up their workplaces, maybe those penalties need to be increased. So my main concern is to have fewer injuries and to get those workers who are injured back to work in a speedy manner. That would then affect the assessments.

Mr Ferguson: Thank you very much for appearing today. I think we have to put this bill in some sort of context. First of all, I think all of us recognize, especially on the government side, that it's not going to solve all of the problems but it's going to solve some of the problems. It's not going to be the entire solution, but it's going to be part of the solution.

Mr Mahoney: Name one.

Mr Ferguson: The larger part of the solution, of course, is the royal commission.

To put this in some sort of context, I would like to ask you this question. We have put forth this bill and we

recognize that there probably ought to be some changes, and that will be discussed when we go through clause-by-clause. But in response to the bill, this is what we have heard from the opposition parties, and I'm wondering if you could tell the government members what you think we ought to adopt. The opposition parties have suggested that we're not going far enough. They have suggested that we ought to take the 90% benefit rate down to 80%.

Mr Mahoney: Who said that?

Mr Ferguson: The opposition parties have suggested—

Mr Mahoney: We didn't say that. Make him tell the truth.

Mr Ferguson: —that we ought to put a moratorium on the time from when a claim is rendered valid and date that back 72 hours. So in effect, if you had an accident on Monday, you wouldn't be able to file a claim until Thursday. In fact, the Liberals have suggested that we ought to take the Friedland formula and apply that to everybody: all past claims, all future claims.

So when we put this bill in some sort of context, out of those three suggestions—the Friedland formula applying to everybody, putting a moratorium from the time of the accident to the actual time an injured worker would get paid, in addition to the other issue that the Tories have suggested, taking the benefit rate from 90% of net earnings down to 80%—I'm just wondering, which one of those three issues could you endorse and which one of those three issues do you think the people you represent would be happy with?

Ms Skanes: That's quite a question. The people I represent, the injured workers I've dealt with, when I talk in my brief about them living in poverty, I'm serious about that. I wouldn't endorse, and the people I represent wouldn't endorse, anything that would take anything away from the workers. We need to make this better for the workers. I would endorse anything that forces employers to clean up the workplace and bring the injured workers back to work.

That's the biggest obstacle that I face, is trying to get people back to work. They're more than prepared to go back, but the employer, time and time again, says: "We're not prepared to accommodate the job. If you can't do the whole job, you can't come back and do any of it." That's about the only thing that I could support: preventing injuries and getting people back to work, and by whatever means we have to do that.

Mr Ferguson: Your answer then is that of the three measures I've suggested, you wouldn't be able to support any of those?

Ms Skanes: No.

The Vice-Chair: Mr Martin, a very brief question.

Mr Martin: I'm glad you came before us today, Cora-Lee, so that you could get a firsthand earful of the kind of gobbledegook that the Liberals have been delivering across the province re this legislation and so many other things. I can't believe that Steve could come in here today, the home of his father, a representative in the—

Mr Mahoney: Oh, here it comes.

Mr Martin: —in the Steelworkers—

Mr Mahoney: You'd better be careful here, pal.

Mr Martin: —and stand up and defend some of the richest, most profitable corporations in our province and cry their plea not to be included in the overwhelming or overriding workmen's compensation program that we have and to use the argument that it would be more costly as opposed to the real argument here, which is that they just don't want to contribute and participate. They know that it would help their workers.

The Vice-Chair: Do you have a question, Mr Martin?

Mr Martin: If in fact their workers were allowed to be organized in the first place, we'd probably get there a lot quicker. I suppose it's the same arguments they used when they travelled the province with Bill 162 and sold deeming to everybody. Are you buying that from them?

Mr Mahoney: Why didn't you change deeming? Why didn't you change it in this bill?

Ms Skanes: My opinion doesn't change from everything I've said here today. I think that the solution is to bring everybody in under the act and to assess them the way they should be assessed. Instead of putting it on the backs of the injured workers, put the responsibility where it belongs.

The Vice-Chair: Thank you very much. On behalf of this committee I'd like to thank the Canadian Union of Public Employees area office for their presentation to the committee this afternoon. Thank you.

Mr Mahoney: Point of order.

The Vice-Chair: In one moment, as I call forward the next people. The next presenter's from the International Union of Operating Engineers, Local 793. Could you please come forward.

Mr Mahoney: Mr Chairman, it's important that things be said that are accurate, since we're recording this in Hansard. I'm sure that things that are said by anyone here could be taken out of context for their own purposes or twisted in some misleading way. I would like to clarify two things.

First, Mr Ferguson said opposition parties have advocated a reduction in benefit levels from 90% to 80%. Our party has done nothing of the sort.

Interjection.

Mr Mahoney: That's what he said. You can read it in Hansard.

The Vice-Chair: Agreed.

Mr Mahoney: Our party has done nothing of the sort. We are opposed to reducing benefits. On the second point that the local member made, with regard to the extension of coverage, I must for the record read recommendation 31 of the WCB Outreach Tour—

Mr Ferguson: Point of order.

Mr Mahoney: —which says: "The extension of coverage to non-covered industries, such as the financial services sector, is not supported at this time due to a lack of statistical and financial evidence that would result in a positive impact on the board's financial situation. Furthermore, the outreach tour recommends that further

examination is required in the form of actuarial studies and statistical projections." That is hardly a defence of banks and insurance companies. I will correct you, and since you invoke his name—

The Vice-Chair: Thank you.

Mr Mahoney: —my father would correct you too, pal.

Mr Martin: Your father would be twirling in his grave right now, if he could hear.

The Vice-Chair: Thank you for that correction. Mr Ferguson.

Mr Martin: Point of order, Mr Speaker.

The Vice-Chair: Mr Ferguson.

Mr Martin: I just wanted to—

The Vice-Chair: Mr Ferguson first, please.

Mr Ferguson: Mr Chair, I want to thank Mr Mahoney for bringing that to my attention. He's quite correct: We ought to be true and correct and factual in everything we say, particularly to the public. Maybe Mr Mahoney might finally explain when he suggested to John Alexander Adams yesterday that the Liberals supported a \$200 increase—

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The Vice-Chair: Order, please. In fairness to our presenters—

Interjections.

The Vice-Chair: Order, please. In fairness to our presenters, perhaps we can carry on with this discussion after all our presenters for the afternoon.

Mr Mahoney: Oh, to hell with that.

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 793

The Vice-Chair: Good afternoon and welcome to the committee. Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you would keep your remarks somewhat briefer to allow time for questions and comments from each of the caucuses. Could you please identify yourself for the record and then proceed.

Mr Michael Quinn: Yes. My name is Michael Quinn. I'm out of Sudbury. We also have here Mr Ed Kaplanis, who is the area representative working out of our Sault Ste Marie office, Mrs Pat Bonell, who is also working out of our Sault Ste Marie office, and an injured worker by the name of Brad Shewfelt. We also have our office manager in the back, Mrs Shelley Andrews.

Good afternoon, ladies and gentlemen. My name is Michael Quinn. I'm the recording-corresponding secretary and the area supervisor for northeastern Ontario. We represent the International Union of Operating Engineers, Local 793, a construction trade union originally chartered in 1919. Local 793's territorial jurisdiction now encompasses the entire province of Ontario, where it represents in excess of 10,000 members.

The majority of the union's members are engaged in the operation, repair and maintenance of cranes, shovels, bulldozers and similar heavy construction equipment. Local 793 also represents employees across the entire

employment spectrum, including the employees of municipalities, scrapyards, industrial cleaning contractors and waste disposal companies. Mr Lew from our legal department was to be present for technical support, but could not attend because of a prior commitment.

In order for this committee to fully appreciate the impact of the proposed changes on our members and other construction workers in the province, it is necessary to sketch briefly the unique characteristics of our industry and how it differs from the industrial sector.

In 1962, the Royal Commission on Labour-Management Relations in the Construction Industry identified several ways in which the construction industry differed fundamentally from manufacturing. First, the construction industry was subject to seasonal and cyclical fluctuations in the economy. Second, the workforce was characterized by mobility, flexibility and the specialized ability to perform construction industry tasks, and the products generated by the construction industry were not easily transported from place to place, so that typically the workers moved from job site to job site. These characteristics remain as true as they were 32 years ago.

With this framework in mind I would like to begin my presentation by applauding the provincial government recognizing that the workers' compensation system is one in need of a major overhaul. Bill 165 I feel captures the main areas of consensus reached by the Premier's Labour-Management Advisory Committee. More importantly, it makes a good attempt at balancing the Workers' Compensation Board's twin challenges of maintaining costs and making the system fairer for injured workers.

In terms of achieving real fairness in the system, I particularly favour the purpose clause, section 0.1, as it will be of benefit to our members in their dealings at all levels of the board. This clause finally addresses what many of our injured members have been denied for years; that is, reasonable compensation and equal access to rehabilitation services. Having this purpose enshrined in the legislation itself will give injured construction workers some leverage in their claims and the confidence that fair treatment lies at the heart of the board's mandate.

The bipartite board—sections 56, 59, 60 and 66—is an amendment which also pleases Local 793 in its attempt to placate both labour and management by giving each an equal voice in determining the Workers' Compensation Board's policies. The bipartite structure is commonly used in our industry with great success. Health and safety committees, grievance arbitration boards and many government tribunals such as the Ontario Labour Relations Board all have adopted this format. In fact, the trustees of Local 793's pension and benefit plans and the training trust funds are jointly represented by labour and management. With the bipartite board, both labour and management will be on an equal footing to make the system more effective and responsive.

Since we live in a dollars-and-cents world, I would like to discuss what is the most important issue or amendment for us. Subsection 147(14) allows an additional \$200 a month to injured workers on pensions who are in receipt of the equivalent to old age security. We feel that this is

an issue of primary concern for the members of Local 793.

To understand why this particular change is so important, the committee must appreciate the incredible injustice that the system put upon our permanently disabled members who were injured prior to 1990. Through no fault of their own, these members have been financially devastated simply because they worked in construction.

Why? This goes back to the unique characteristics of our industry as I noted earlier. When those characteristics are combined with the fact that our members are paid relatively high wages to perform specialized and strenuous work, but yet have few transferable skills, the end result has the effect of automatically denying them access to rehabilitation services because they, according to the Workers' Compensation Board, cannot approximate their pre-injury earnings if the Workers' Compensation Board were to offer training.

In other words, when the Workers' Compensation Board deemed that our injured members could only earn \$8.50 per hour in alternative employment, and that didn't come close to their previous wages, they were consistently cut off the system with no other help. Instead, they were simply given a subsection 147(4) supplement, presently \$387.74 a month, a small pension and nothing else.

Clearly, the system failed them terribly. These members can no longer work at their trade because of their permanent injuries, many have families to support and, like all of us, bills to pay, yet the Workers' Compensation Board closed the door shut on them. I ask you, where is the fairness in this? The \$200-a-month pension increase is in Bill 165 to right this past wrong.

The next point I'd like to address is the Friedland formula. This is another aspect of Bill 165 that will dramatically affect the income of our members. Subsection 148(1) deals with the de-indexing of pensions to 75% of the CPI minus 1%, with a cap of 4%. What about the worker who is 40, like my friend next to me, 30 or 20 years old when they are awarded a pension? To de-index permanently these disabled workers to a lifetime of increasing poverty is anything but fair compensation.

However, we are well aware that the Workers' Compensation Board is struggling financially and changes must be made to get the Workers' Compensation Board back on its feet. Cutting benefits by implementing the Friedland formula is not the answer. Pure and simple, this approach would be reforming the system on the backs of those who need the help the most, the injured worker. In our view, the answer lies in strengthening those sections of the act that address prevention and re-employment. Preventing accidents must be the number one priority. I will thus discuss this later in detail. When accidents decline and those who are injured get re-employed by their employer quickly, you will achieve a true balance between fair compensation and fiscal responsibility.

In short, we agree with certain aspects of the legislation, and I have outlined those for you. However, there are amendments of a more technical nature which cause us concern. These are the experience rating, the concept of jurisdictional compensation, the absence of union

representation in the vocational rehabilitation process and the fact that the re-employment obligations of employers have not been strengthened for the construction industry. How can we attempt to lower the unemployment rate of injured workers, which currently exceeds 40%?

We have attached an appendix which details our positions concerning these and other changes in Bill 165.

I've made some rough notes and I related that I would discuss how I believe we can lower the costs of workmen's compensation. I would like to do that. I believe I've taken about seven minutes. Is that correct? Thank you.

Ladies and gentlemen, you've probably heard it before, but there is hope. I would think that everybody, since you're concerned about lowering the costs, would have got the latest, 1993, annual report from the Construction Safety Association of Ontario. I won't go through it in detail but all the graphs are down, and it was referred to in here earlier today. If you haven't picked this up, please get a copy of it. But I'd like to give you just one statistic out of it. If I get the right page, I'll give you the right statistic.

1450

In 1992 in the construction industry there were 417,534,653 hours worked by construction workers. That's according to the workmen's compensation records. It's only by an accident, I suppose, that there was an approximate amount of hours worked in 1982. There were 7,475 less accidents that were either medical aid or lost-time injuries. I don't want to control the meeting and say, "Who hasn't got a copy?" because I'd make sure you get one.

Mr Offer: So there were 7,000 less accidents from 1992 over 1982?

Mr Quinn: No, comparing 1992 and 1982, there were more hours worked in 1992 but yet, if you look at the lost-time injuries, the difference comes to, I believe, 7,475 less people. If you look at all the graphs, all the graphs are down dramatically. It's astounding. We have to train people, workers and contractors in our industry, to get better.

The other thing which I think is most important is that the gentlemen and the ladies sitting around this table have to instruct the government where their priorities lie. In the province of Ontario, and we probably need every one of them, there are 260 game wardens, conservation officers, to look after the fish and the animals. There are 77 construction inspectors, seven in northern Ontario. That's disgraceful. The only way you're going to lower accidents is to have inspectors out there.

The next thing I would like to probably move on to is a few different ways of how I believe we can do it with government control. Some form of the provincial government will award a contract. I don't know how many contractors there are in here, but my understanding is that when you put a contract out for tender, you put it out for X amount of material that has got to be moved.

I think what we should be doing is putting it out for the proper amount of material. That is the amount of material, if you're putting a sewer and water job that

you've got to, by the law, slope. We continually run into problems where you go to dig on the side of a highway and the Ministry of Transportation or some regulatory organization that's got an operation to run tells you you can't cut the pavement. The bottom of Thibeault Hill would have been a very good example where, three weeks ago this Friday coming, they went 24 feet straight down, no sloping, no nothing, an MTC inspector standing over the hole.

These are the types of things where, if the government is sincere about cutting accidents, make sure that when you're putting out tender documents, besides saying it's got to be done safely, that you put in the amounts of material to be moved that reflect doing the job safely. Other than that, there are people out there who are going to cheat. The people I represent are going to cheat and the employers are going to cheat. They're going to get down to the bottom of that hole as fast as they can and hopefully no one will get hurt. The vast majority of people try to operate safely.

Will you please tell me when there's five minutes left?

Just for your information, one of the other big things, and you're going to see more of it, at least from my membership, is ergonomics. If you go out today and you buy, let's say, a D8 bulldozer, a Caterpillar, the contractors will go out and buy after-market cabs for them. The cab has to be lowered down to go underneath the roll bar. It's mandatory by the law that you have a roll bar. They lower the cab down. Then they've got to lower the seat down. So now you're sitting with your knees up in your chest. If you're over five foot five, you've got a real problem.

The next big issue—ergonomics once again—if you're a dozer man—that's why I couldn't give the young lady who was coming here today. I do have a member whose hand is twice as big as what it should be. It will go down in three or four weeks when he leaves work, but you've got all this in a ball turning back and forth. Imagine if you're pushing a spill pile from here to the gentleman across from me and you're going forward and backwards and you've got all these controls in one hand continually going. It just wipes you out.

The other thing that we see, when you're driving on a highway—Thibeault Hill is a good example and maybe I should pick another one—the Ministry of Transportation will give you 20 minutes to stop traffic, blast and take the product out to open up the highway. That's fine, but it's my members who are going into those spots. First off, you don't know if there's silica dust in there. We know that there's dust. We also know that there are carcinogens, and the dynamite gets let off. But our priority is to keep the traffic flowing. Most of your jobs, you stop and ask the loader operator. You're the flag-person.

The other thing—there seem to be a lot of ladies in here—the men have put up with for years is that the Occupational Health and Safety Act says that there should be toilets on all construction sites. I've got to tell you something: If the MTC was to stop all jobs tomorrow morning that didn't have a toilet, there'd be very few constructions jobs going on with the MTC. It's disgusting

what goes on there, just disgusting. You're told it's not a compensation issue, but I think it should be noted. I guess it could be a compensation issue too, if you got eaten by a bear.

The Vice-Chair: You have five minutes left now.

Mr Quinn: Thank you. We have just in a little excess of 280 members who are on compensation. A lot of them have been on for quite some time and will be directly affected by the \$200. I hope that in your presentation you can feel for these people.

I'd like to tell you that while we've been talking there have been 15 accidents in the province of Ontario. Statistics will tell you that while you're on this committee here today one person will have got killed in Ontario. I'd also like to tell you that 16 people will die today of occupation-related diseases, and we have to do something about that.

We've got a problem here with the Workers' Compensation Board. I personally don't have problems with the employees of the board. I feel that in most cases—and I'm kind of quite quick-tempered—these people are professionals and have dealt as best as they can with the regulations they've got. They're like most public servants: Pretty near all of them now, including I guess management people and everybody in our society, are working under a tremendous amount of strain and pressure, but I believe they do a very honourable job.

One of the things I'd like to point out, just for the record, is that I tried for several days to find out how much money is owed to the Workers' Compensation Board. It's not in their financial report. It may be in there, but it's hidden. As of July 1, 1994, there was \$431,188,010 owed to the Workers' Compensation Board. That's a substantial amount of money, but I think it should be in their reports. It should spell it out, how much money is owed to this organization.

It seems that somewhere along the line in this committee something went wrong with this. I would like to just suggest something, and this is a real good city to suggest it in, because I think in this city we've seen where we had good government, good management and good unions that salvaged Algoma Steel. No matter how you want to look at it, I think it also salvaged Sault Ste Marie.

I would think that if in future when things start to come apart, when you're having groups like this, and maybe before you come around with what I call your dog-and-pony shows, because that's what the members call my shows—anyhow, when you come around and you're running into a problem like that, get somebody with the expertise of Vic Pathe to maybe look at the issues and maybe you could have made a little shifting, a little whatever. There are other people besides Vic Pathe, but he comes to mind in Sault Ste Marie because I think he, along with the parties I noted, did a wonderful job in trying to salvage Algoma Steel.

On behalf of my committee, I want to thank you for giving us the opportunity to appear before this board and we also are looking forward to making any other submissions. Thank you.

The Vice-Chair: Thank you. A quick comment, Mr Carr.

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Mr Carr: Thank you for your presentation. On page 5, you talk about the Friedland formula and you say you're opposed to cutting benefits. I take it that if the bill remains the same and the changes that you request aren't made, you would like members of this committee then to vote against the bill on third reading?

Mr Quinn: No, you're taking me wrong, sir. We believe that this bill has to be passed for the injured workers, and I think it also has to be passed for the workers who haven't got injured, as I remarked in my report. When we look at the injured worker, he's a very small statistic, and all you're looking at are very defined costs. What I think we're missing here in a lot of cases is a situation where what does it cost to replace this member or this worker. You may have to retrain somebody. I think it's a burden, but I believe what you have to do is you definitely have to get—that may have to be refined somewhat—this bill passed.

Mr Martin: Mike and Pat, and Ed and Brad, thank you for coming forward. Certainly your being here I think is recognition of the fact that we have in front of us a big challenge. Workmens' compensation, from anybody's perspective at this point in time, is not working properly. There needs to be adjustment, there needs to be some movement. After consultation with all of the major players we brought forward a package that we, trying to give some leadership in this area, feel will take us a distance. It won't take us the whole hundred yards, but it'll get us a distance. You've come forward today with a package that compliments us on some of it and challenges us on other parts of it, and I think that's fair.

I don't think anybody could ask much more of any group grappling with a challenge of this magnitude. Your idea re the issue of ergonomics—I think the example of Algoma Steel in Sault Ste Marie is a good one where people got together and worked and dropped some of the old traditional barriers and moved forward and got some things going.

I don't know if you were here—

The Vice-Chair: Thank you.

Mr Martin: Can I ask a question?

The Vice-Chair: No, no time for a question. Thank you for the comment. Mr Mahoney.

Mr Mahoney: You stated pretty clearly to me, I think, that the government is violating its own health and safety practices that it recommends with regard to highway construction. You used the example of the toilets, but of perhaps even more significance was the example of the limited time of road closure to get the job done and the pressure that puts on. What would you recommend the government do to obviously obey its own laws?

Mr Quinn: I'm not trying to say that the government is violating its own laws; there's probably no law regarding it. The only way you would be able to determine this, Mr Mahoney, I suppose, would be to get somebody from the occupational health and safety agency to come out

and take samplings of, first, the dust and, second, the carcinogens that would come out from the powder.

This has gone on for a long time. The people who are working in that industry accept it. It's unfortunate, but there are just so many out there. I wish I had the time. I'm going to mail in some other additional information that directly relates to the operating engineers and how our people get hurt.

One of the things, referring to the government, and it should just be a standard, is that most of your offshore equipment that comes in, let's say its a backhoe, does not come in with catwalks. You have to be standing on the slippery track and reaching up quite often to get into these products. The North American products have catwalks because they realize people fall and get hurt, and it costs money in Canada and the United States to fall and get hurt. Don't quote me, but I believe that represents 18% of our accidents in my trade. Products should have to set some standard. How do you expect a person to get up on a machine and walk around it if there's nothing to walk on? I don't know how people expect people to do it, but most—sorry.

The Vice-Chair: Your time is up. I'd like to thank the International Union of Operating Engineers, Local 793, for bringing its presentation to this committee this afternoon. We look forward to your future presentation that you will be sending in to the committee.

Mr Quinn: Thanks very much.

Laurie Masters

The Vice-Chair: I'd like to call forward our next presenters from the Employers' Advocacy Council. Good afternoon and welcome to the committee. Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat briefer to allow time for questions and comments from each of the caucuses. Would you please identify yourself for the record and then proceed.

Ms Laurie Masters: Good afternoon, and thank you for the opportunity to express my views on Bill 165.

My name is Laurie Masters. I'm the general manager of Seamless Cylinder International Inc of Sault Ste Marie, which manufactures small-capacity steel vessels of low to medium pressure. I am also an owner and director of the company. As such, I personally have legal, financial and moral responsibilities for the workplace safety of the roughly 45 people we employ. Let me make that more clear: I sign the cheques for our workers' comp premiums, I submit the form 7s, I personally write all correspondence with the WCB regarding claims and, as a company director, am subject to the legal implications of health and safety violations.

In this short, straightforward presentation you will learn the views of a small business person who, in addition to having production line work experience from the early 1980s—this is all with Seamless Cylinder—I have 10 subsequent years of front-line, hands-on experience with Workers' Compensation Board claims management and senior responsibilities for workplace health and safety. I also have a real understanding of the importance

of workplace safety because my brother was violently killed in an industrial accident by a forest products wood-chipping machine.

I was provided with the opportunity to speak at this August 31, 1994, Sault Ste Marie committee session via the Employers' Advocacy Council. I have reviewed the submission of its provincial council as well as the regional presentations made in London and here in Sault Ste Marie earlier this morning. I am very much in agreement with their submissions and I do not intend to repeat their message, as I believe they have clearly stated their position and that their comments and concerns are on target and must be taken seriously and acted upon.

You have heard from a range of employer representatives, worker representatives, injured workers, organized labour and large employers. I would question whether you have or will receive adequate representation from small business. This will not be the result of a lack of concern on their part. I really believe that small business, particularly in manufacturing, is under incredible pressure to survive on a day-to-day basis, and must allocate their scarce time resources to the areas of greatest payback and impact or, worse yet, fight only today's largest fire. The poor reputation the WCB has earned for itself leaves small business frustrated, overwhelmed and somewhat intimidated. That is all the more reason why the Employers' Advocacy Council presentation needs your consideration and support. They truly speak on behalf of many employers who are too beleaguered to appear.

As a beleaguered, frustrated small business person, why am I making this presentation today? Because I am concerned enough that I must try to make a difference and, as such, have invested several valuable hours in this presentation.

I wish to focus on the following areas of Bill 165 which, based on my experience, will prove to be ineffective, unmanageable and, more to the point, destructive and clearly a step backwards.

My first concern is with the new reliance of the NEER system on the process instead of the results.

In my 10 years of dealing with the Workers' Compensation Board for my company, the most positive change was the introduction of the NEER system. NEER helps us look beyond the premiums we pay for the unfunded liabilities we may have had no role in creating. It clearly tells us that there is a consequence to our actions. Injuries this year will cost us in the coming years. Success from infrequent, non-severe, non-disabling injuries will be a benefit. When I read Bill 165 and the various summaries and commentaries on it, I was distraught by the changes it proposes to NEER.

In manufacturing, the payback to the investment in preventive maintenance is fewer major breakdowns in the future. The payback to excellence in quality control is no rejects from the customer. One of the paybacks to an effective health and safety program is a NEER refund. A reward for the joint health and safety committee is to see that the company achieved a NEER refund. It means they are doing their job. It means there are fewer, less-costly workplace injuries. If it is a NEER penalty that results, it reinforces to the company the need to make changes and

tells the joint health and safety committee that it needs to help the company work harder and smarter to manage health and safety.

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I believe the Workers' Compensation Board is overstepping its bounds and duplicating services with respect to evaluating processes and policies of the workplace, and I believe Bill 162, version two, needs to resolve problems, not tinker with the programs like NEER which are simple, results oriented and clearly effective. Workplace certification and other elements of the Occupational Health and Safety Act address issues relating to workplace processes and policies.

I also have a concern with worker consent being required for the release of return to work information. I believe the worker should authorize the release of personal medical information regarding the injury, but not the return to work information. The return to work information must, without question, be available immediately to the employer and the worker. If not, a large number of injuries will become lost times solely because of the restricted access to this information. Even with the existing system, this process does not work well. We're very fortunate at Seamless to have a joint health and safety committee and workforce very supportive and committed to the facilitation of return to work without unnecessary lost-time incidents.

We do not need legislated confrontation working to tear down the constructive, effective program we're building. Bill 165 is going in the wrong direction with regard to return to work information. I believe Bill 165, version two, needs to protect the release of non-relevant, medically sensitive information and must demand that the physician release basic back to work information such as, "no work with right hand for two weeks," or "no lifting, bending or twisting for two weeks and then to be re-examined." Those are two basic examples that I've seen from forms that come back to us, and this is so important. I suggest that the memorandum of treatment form provided by the workers' comp should actually have a multiple copy, return to work tear-off section for the care giver, the worker and the employer. My second concern with this issue is how it will impact the ability of the board to identify and deal with pre-existing or non-work-related injuries.

Some concerns I have with the vocational rehab section: I see several difficulties here.

First, as long as the employers of Ontario continue to solely fund the WCB, they have a role to play in vocational rehab.

Second, I fail to understand how this program works in isolated communities who have struggled to maintain the presence of industry and commerce, but do not benefit from adequate medical services. How can the WCB evaluate and enforce vocational rehab related penalties for firms in such regions?

The third concern is how advanced of a program can be achieved by small employers of less than 70 to 100 people? It's very clear that Bill 165 does not differentiate between 10-person firms and 1,000-person firms, but

financial realities and a limit on resources do.

The fourth concern is that increased conflicts, penalties and more bureaucracy are not a solution but an exasperation of the problem.

Another issue is viewing the Workers' Compensation Board as a financially sound organization. You've no doubt heard many versions of this concern already, but I must say that I cannot fathom how the Workers' Compensation Board can become financially sound, as mandated by the Premier of Ontario in 1993 via the instructions to the Premier's Labour-Management Advisory Council, without financial responsibility clearly being part of its statement of purposes. As the harsh realities of the 1990s have shown, and quite clearly in Sault Ste Marie, being financially sound relates to every operational aspect and is a responsibility of everyone within an organization.

One issue of concern that is not directly addressed by Bill 165 deals with recovering overpayments, and this came to mind primarily because of a combination of recent experience we've had and concerns over the release of return to work information. Under the existing system we recently experienced how easy it is for several weeks of lost-time benefits to be paid before a dispute over eligibility was dealt with—and the example I'm referring to was a broken finger, not a severely disabling injury. This was despite initial intervention by us advising the Workers' Compensation Board that there was a problem with the lost time nature of the claim, and a subsequent statement that there had been a return to work. The claim payment continued despite that, and it's my understanding that in this situation, if an overpayment is made, the Workers' Compensation Board takes only limited measures to recover the overpayment. I strongly believe that the board needs to introduce a system whereby overpayments, particularly those resulting from misrepresentation, are collected by a payroll deduction after the return to work, or from future workers' comp benefits, or from a subsequent employer, once identified.

I envision this as being similar to the system for recouping unemployment insurance overpayments. To be honest, I have not researched the costs of unrecovered overpayments or the return on investment in such a recovery system, but I do believe that unreclaimed overpayments are an insult to the employer who has funded the overpayment as well as to the vast majority of workers who do not abuse the system and who do return overpayments.

Again, I would like to thank you for the opportunity of sharing my views. I can assure you that they are shared by many small business people in Ontario who have not had the opportunities to prepare and make presentations to you. I would guess I have approximately 10 minutes available for questions.

The Vice-Chair: That's right. About three minutes, Ms Murdock.

Ms Murdock: Thank you for coming. You're right; for small business people to take the time to do this I think is important.

I want to talk to you about page 2 and the NEER

system and the process. Historically, when that was set up in 1984, there were only six major groups involved and it would never exceed—whatever the surcharge was, you would only get your money from NEER to the amount that was in the surcharge fund, kind of thing, and it was successful. I don't think anyone has disagreed with any of the groups that have come forward and said it does work; companies do get health and safety practices above and beyond.

But in 1987, they changed the formula so that there wasn't a requirement to balance, or keep the surcharge and surpluses equal, so we come up to 1992, where \$25 million is paid out in NEER; we come up to 1993, where over \$150 million is paid out in NEER surplus, over the surcharge. It's almost like it's growing exponentially on an annual basis. Where do we get the money to pay for that, to continue that?

Ms Masters: I'll answer that question in a second. The concern I have is if the issue is that a change was made to the NEER system whereby more money is going out of it than is going into it, I don't see how that relates to tinkering with the system so that you're evaluating a company on its processes and practices. They're just two totally unrelated issues—

Ms Murdock: Yes, they are, but—

Ms Masters: —and that's the concern I have. That's the direction I'm coming at it from and that's the problem I have. They're now saying—let me go back to your original question.

Ms Murdock: I'm not discussing the system as a process, I'm talking about it from a financial aspect, given that the whole focus of business groups has been financial accountability. So on the other side, where do we get the money to maintain the other process?

Ms Masters: Where the money comes from—the reason people are getting the NEER refunds is because of the savings they're introducing to the system by having lower accident claims. So if there are lower accident claims happening, then where is the financial disaster coming from on the other side? Whether it's administration based or where it comes from, I don't clearly understand. The thing I don't understand about it is—

Mr Mahoney: You do. You understand.

The Vice-Chair: Order, please.

Ms Masters: The reason NEER is producing these excess payments, in your view, is proof of how successful it is, because those costs are coming down. So if the costs are coming down—

Ms Murdock: But what I'm saying is—

The Vice-Chair: Thank you, Ms Murdock.

Mr Mahoney: I've just got to follow up because, clearly, the deputant understands; the parliamentary assistant does not understand. The answer I think you were giving is that it's a system that will generate savings as a result of results oriented—

Ms Masters: My understanding of that system is you're using penalties from one group to fund savings for another and you're running out of penalties to fund savings with. But those savings are being achieved, so the

financial problems are somewhere else in the system. That's my view. That's my opinion on it.

Mr Mahoney: It's a good opinion and it's interesting, actually, that we've now heard recognition by the parliamentary assistant that the NEER system has been working well because it generates savings.

This may not be a question to the deputant, but it's a result of this deputation—the recovering overpayments. The deputation immediately preceding you said there was some \$400 million—I forget the exact amount of money—that was owing to the WCB. I wonder if we could ask the ministry to provide us with a breakdown of that \$400 million and specifically how much of that would be in uncollected overpayments.

1520

The impact on small business of this bill—

Ms Murdock: Can I get a clarification on that?

Mr Mahoney: Not if it's taking into my time, no.

The Vice-Chair: I think the ministry staff did get that.

Mr Mahoney: The impact on small business—the concern I have is that small business will have a lot of difficulty, and if you recognize that anyone with fewer than 20 employees is exempt from the health and safety requirements in the act but they're not exempt from workers' comp—so there's sort of a conundrum there, where the government is saying on the one hand, "We're going to give an exemption to the smaller business because of the costs involved," yet if they don't have that opportunity, how can they then turn around and save the money and use the NEER program and do all of—that they're kind of on their own out there. Algoma can hire full-time health and safety people on the shop floor, Chrysler, Ford, etc etc.

The small business person, even ones over 20, say under 50 employees—I think this is going to be a huge burden to them and they are going to be subjected to the fines perhaps more rigorously than the large businesses who will be able to afford to find ways to avoid them.

Ms Masters: Yes, they can afford to find ways to defend themselves and, like you say, avoid them. Our company is a perfect example of the burden of trying to deal with those issues. Several years ago, when the changes to the WHMIS system came in and we had some of the other moves towards the requirements of induction training and tried to get our act together on it, we invested tens of thousands of dollars. We made the investment and we did it and we would love to be at the point where we had a full-time safety officer to keep track of all that stuff, but we don't. That's outside of my day job, unfortunately, but it falls to the owners and the senior people in the company. The responsibility legally is with the senior managers and the activities have to be there too, and if there's one senior in the company, 24 hours is a very short day.

Mr Carr: Thank you very much for your presentation. I had an opportunity to go across the province on one of our small business task forces and we heard many complaints about all levels of government and things that are happening to small businesses. As you know, it's the

number one creator of jobs in this province.

One of the big concerns that was voiced was on WCB. At every stop there were concerns and what we're facing is a twofold problem: Our assessments are higher than other jurisdictions, and we heard today comparisons with BC and so on; and our unfunded liability also is higher.

One of the things I thought would be a good idea, for the government's involvement, would be to look at other jurisdictions, decide what that competitive rate is and say to the WCB: "Your rates have to be competitive and you can't run an unfunded liability. You sit down with union, injured workers and business and come up with a plan that meets those two criteria. You have to be competitive so we will have the jobs," because I think what people don't realize is when we lose the jobs, we lose all of the revenue coming in and it's like taxes; you reach a certain point where it gets so high you lose it and there are diminishing returns. We've reached that point with WCB costs. If we are in a position to go to the WCB and say, "Your mandate is that your assessments have to be competitive with other jurisdictions and you can't run an unfunded liability," is that, as a small business person, something you think would be the way to handle it?

Ms Masters: Yes, I do. One concern I have is that what you were just describing sounds an awful lot like what the Premier's council was supposed to achieve. One of the objectives was to make it financially sound. From what I've read, it wasn't unanimous agreement between labour and management, but an accord was reached that both sides were prepared to accept and it appears to have been—I didn't see any resemblance to it in Bill 165. Maybe I had difficulties reading Bill 165, but the impression I had was that they lost the accord when they wrote the bill. I don't know; I think they've already tried that and it really concerns me that this process ended the way it did.

Mr Carr: All you needed with that was the political will to come through with it, and I know there was some give and take; business gave a little bit on some of their concerns, some of the labour groups gave a little bit and there was a plan in place that was going to do it. I think for political reasons, because of some of the other things they've done with labour, not the least of which is the social contract and so on, this was something where they didn't give. I think that's the way to do it.

A quick question on assessment. One of the problems we've got is that our assessments are too high; the system is complicated. Do you have any comment on other jurisdictions and our assessment costs, as a business person? Have you looked at other jurisdictions? Would you like to comment on that aspect of the WCB?

Ms Masters: From our business' perspective, it becomes a bit more complicated, because we're very much an international business. Not only do we have to worry about how competitive we are relative to BC or Quebec or Newfoundland or Manitoba or wherever, we also have to be concerned about how we compete against China, some of those countries, where I'm not sure that they know how to spell health and safety over there yet, let alone implement it. I don't mean that in any attempt at a racist slur, I'm just saying how far behind they are

in health and safety. It's very sad, they've got a long way to come, and unfortunately, they're killing our industry in the meantime by not bearing those costs. We have a hard enough time being competitive within Canada, but competitive rates are definitely a big part of it.

The Vice-Chair: On behalf of this committee, I'd like to thank you for your presentation on behalf of the Employers' Advocacy Council.

Ms Masters: Thank you.

The Vice-Chair: I'd like to call forward our next presenters from the Sudbury Mine, Mill and Smelter Workers Union, Local 598.

Ms Murdock: Can I just have clarification from Mr Mahoney, Mr Chair, while Gary's coming up?

The Vice-Chair: Sure.

Ms Murdock: On the question that you asked the ministry, for non-collection of overpayments, right?

Mr Mahoney: I want to know what it all is. The reference that the deputant made was, there was \$458,000,010 or something that was owed to the WCB. Presumably, that would be made up of unpaid premiums, perhaps companies that have gone out of business, but I think a portion of it, and I'm not sure how big, would also be due to overpayments not collected back. So I just want to know it all.

Ms Murdock: I too understand the issue that was made up there because the thing is, if the money isn't coming out of a surcharge, it's contributing to the unfunded liability. I do understand that issue.

Mr Mahoney: Do you want to shut her off?

Ms Murdock: Well, as the parliamentary assistant—

The Vice-Chair: Order, please.

SUDBURY MINE, MILL AND
SMELTER WORKERS UNION

The Vice-Chair: Good afternoon and welcome to the committee. Once again, a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat briefer to allow time for questions and comments from each of the caucuses. Could you please identify yourself for the record and then proceed?

Mr Gary Hrytsak: My name is Gary Hrytsak. I am the vice-president, compensation, health and welfare officer for Sudbury Mine, Mill and Smelter Workers Union, Canadian Auto Workers, Local 598. We're here in front of you today because of the bill that's being proposed.

To go out of our brief that's been presented to you, we support the proposed purposes of the act. They clarify the purpose of the act is to help workers who are injured or suffer from occupational diseases which arise out of and in the course of their employment.

Subsection 1(1): We support the change of the term "industrial disease" to "occupational disease" both here and in later sections. We also support the brief presented by the Industrial Disease Standards Panel. I want to make that known to you.

In the brief that you have in front you is an excerpt of some of the values that the CAW, the Canadian Auto

Workers national, is putting forward to this committee across the province. We're remaining unified in this.

Subsection 7.1: We are concerned that if there is a cost-sharing agreement among two or more boards for claims for some occupational diseases such as silicosis or hearing loss, this proposed section would prohibit such agreements. Board agreements among the various boards cannot override a statutory prohibition. We therefore recommend that this proposal be deleted.

Under section 43, we are disappointed to see no proposal from the government to restrict the board's practice of deeming, the infamy of that. The statutory authority for deeming comes from clause 43(3)(b) and subsection 43(7). Great injustice is perpetrated by this miserly and unfair practice. If a worker turns down a real job, that's one thing, but it's quite another if there's no real job to turn down.

We strongly recommend that section 43 be amended to prohibit the practice of deeming and only if a worker turns down a real job should this be able to be considered in the calculation of future earnings loss.

Under section 51, we are completely opposed to this proposal and recommend it be deleted. As a result of experience rating and the increased interest on the part of employers in claims matters, more and more employers want to know intimate details of workers' health. I can give you some examples of those later, if you wish.

Why do employers need such information? To brow-beat workers into returning to work before they are ready? To attempt to terminate workers because of non-culpable absenteeism? A defence against this management right is if the prognosis—the condition in the future—shows a likely improvement in the illness or condition which has caused the absenteeism. If management knows the condition will continue without improvement, it could use this knowledge to terminate the employee. Intimate medical knowledge is already available to employers through the non-economic loss process, and this must stop.

1530

Subsection 51(3) requires the board to pay for such medical reports. This is a good deal for employers. They can demand such reports at will and they have no obligation to pay for them. There's no downside for the employer. The proposed amendment to section 51 is not part of the Premier's Labour-Management Advisory Committee agreement. We strongly recommend that the proposed amendment to section 51 be deleted.

With regard to rehabilitation under section 53, this section has been rewritten to provide board assistance to employers with vocational rehabilitation. The board's role is to insist they fulfil their obligations. Injured workers need rights to vocational rehabilitation, not employers. We oppose the addition of the word "employer" to subsections (1), (3) and (9).

We recommend that subsection (10) be rewritten as follows: "If the worker determines that a vocational rehabilitation program is required, the worker, in consultation with the union, if there is one, and the board shall design the program and the board shall provide it."

We are opposed to the change in subsection (12). The present subsection (12) says that the board "shall" assist the worker to search for employment for a period of up to six months after the worker is available for employment. The new proposal says it "may" provide such assistance. We recommend that the present wording be retained.

What is an injured worker to do if, while off work due to injury, his or her plant closes? In the past, the board had no obligation to help him or her for six months. This proposal would make future assistance optional. Why would the accident employer request the board to assist an injured worker to seek employment elsewhere? Because the employer had just fired the worker or would like to get rid of him or her? Surely, the board should not be placed in a position of such conflict of interest.

Section 56: It is claimed the Ontario board is bipartite but in practice the two public interest board members erode that concept.

Section 58: We are completely opposed to the proposal in subsection (1) requiring the board of directors to "act in a financially responsible and accountable manner in exercising its powers and performing its duties." This subsection will be used by the employers at every opportunity to frustrate entitlement by narrowing claims policies and procedures and rejecting new entitlement to which disabled workers should have been entitled in the first place.

In his 1983 report, professor Weiler had this to say about undercompensation of cancer claims, using the most conservative Doll and Peto estimates that 4% of cancers are caused by work, and we quote:

"From this simple analysis one would conclude that toxic exposure in Ontario workplaces produced approximately 700 cancer fatalities a year in this province. But the Ontario board is now compensating only 65 cancer cases a year (66 in 1979 and 64 in 1980), of which about 40 a year are for fatalities (33 in 1979 and 44 in 1980). This is less than 1 out of 17 occupational cancer fatalities predicted by the conservative end of the scientific debate, let alone the one out of every 75 deserving cases predicted by those of more radical persuasion." I happen to be one of the more radical. "Looking at lung cancer in particular, the Doll and Peto analysis would estimate 425 occupationally produced lung cancer deaths annually, but the Ontario board compensates only a tiny fraction of them."

"The financial dimensions of this gap are startling. The average total cost of a compensated cancer claim—medical aid, disability benefits, and survivor benefits—could easily be \$250,000 in current dollars (especially once the benefits for surviving dependents are reformed as proposed in the white paper). Simply to do a more adequate job in compensating a conservative estimate of occupational cancers, which is only one aspect of the overall industrial disease problem—would add nearly \$150 million to the annual cost of compensation benefits in Ontario (or about 25% of the total current cost of workers' compensation). Another way of putting it is that 650 workers (or their surviving dependants) who fall victim to occupational cancer each year are being

deprived of \$150 million in benefits which the law had promised them."

How will the new board of directors, constrained by the provisions of subsection 58(1), possibly rectify this wrong? We recommend in the strongest possible terms that the proposed subsection 58(1) be deleted. The proposed subsection (2) is quite sufficient to ensure that the board of directors fulfils its responsibility in a diligent manner.

Subsection 63(2): The form providing the medical information ought to be as skimpy as possible. It should simply say "fit" or "fit with limitations." The limitations should relate solely to the work requirements. Example: unable to lift more than 10 kilograms five times a shift. They must say nothing whatsoever about the nature of the diagnosis, whether the reason for the lifting restriction is a hernia or a bad back.

Clause 65(3)(h): By adding the phrase "and addressing any duplication of benefits provided under this act" to the board's powers to enter into intergovernmental agreements, the employers score again.

We recommended that the proposed addition, clause 65(3)(h), be deleted. There are far more workers who are undercompensated as a result of falling through the cracks of the various systems than there are overcompensated individuals. In fairness, we recommend that clause 65(3)(h) be amended to add the phrase "and addressing any undercompensation of benefits provided under this act."

Subsection 65(3.1): We do support this proposal.

Section 65.1: We are opposed to this proposal for imposing policy on the board from the minister and cabinet. The workers' compensation system is supposed to be at arm's length from government. The new board of directors structure re-emphasizes this point.

We have no idea what the government contemplates under this proposed section. Subsection (4) proposes to repeal this section after one year. We can only speculate that once government has a taste of hands-on policy direction in the area of workers' compensation, more may be contemplated. It would be an easy matter to delete subsection (4). We therefore recommend that this section be deleted.

Subsection 69(2): We support the board's exclusive jurisdiction to make such a determination subject to the appeal provisions of the statute.

Subsection 72(1.1) and 72.1: We are not opposed to the idea of mediation but we are wary of it. Justice delayed is clearly justice denied, but is the proposed alternative just? We are concerned about what effect mediation may have on the appeal system.

Subsection (2) allows the board to provide mediation for non-vocational rehabilitation issues. If the appeal system were squeezed due to inadequate funding, would mediation by the board be offered as a substitute? Would workers' advocates take the easy way out rather than fight to maintain the adequacy of the appeal system?

Subsections 76(3) and (4): Since we do not support tort liability, we have no difficulty in supporting this proposal.

Section 88: We would have no problem deleting subsection (3), which provides for the liability of the crown, but perhaps the proceedings against the Crown Act take precedence.

Subsection 95(6): We do not support the change from the present requirement of the Ministry of Labour determining the Industrial Disease Standards Panel budget to the board determining the Ontario disease panel budget. We are now using the new term proposed by them. The reason for this is simple: Just as the board should be at arm's length from the ministry, so should the industrial disease panel be at arm's length from the board.

This proposed amendment is also deficient in that it does not guarantee adequate funding for the panel. The panel has a need for guaranteed long-term financing so that it may conduct long-term studies. One of the reasons why the panel requires long-term financing is because research on disease issues often spans many years. As well, the initiation of new research projects may vary from year to year. In the past, both labour and management groups have been frustrated by the panel's inability, because of inadequate funding, to proceed with needed research.

It would thus be extremely tempting for the board to put the financial squeeze on the occupational disease panel so that its work is restricted. Tightening the purse-strings on the Ontario Occupational Disease Standards Panel would either make its work suffer because there would be less of it or, worse, make the occupational disease panel so compliant that it discovers nothing new, instead of the board.

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We recommend that the proposed changes to subsection 95(6) be deleted. The panel itself suggested the following wording for its amendment, and we concur:

"The board shall

"(a) provide an annual budget for the panel at the beginning of each fiscal year of the board, in an amount equal to a maximum of 2%, and in any case not less than 1% of the board's administrative expenses for the preceding fiscal year;

"(b) pay the costs and expenses associated with the exercise of the panel's mandate and with its administration, including research costs and the remuneration and expenses of its members, officers, employees and agents, from the panel's annual budget; and

"(c) regulate its fiscal relationship with the panel through a memorandum of understanding."

Subsection 95(8): We recommend a new subsection be added which would read:

"(e) to make decisions about descriptions of disease and process in schedules 3 and 4 which shall become regulations by order of the Lieutenant Governor in Council within two months of that decision."

Duplication and waste should be eliminated. The occupational disease panel should make decisions about the occupational disease schedules and the board should implement them.

Subsections 95(5) and 97(4): We support the proposed changes for the reasons noted above.

Subsection 103: We wholeheartedly support this proposed change. Penalty assessments on employers enable the board to modify employer behaviour to ensure sound efforts are made in the area of vocational rehabilitation.

Experience and merit rating programs. Section 103.1, flat rate assessments: We recommend that the board abolish experience rating and use a flat rate assessment system. A flat rate system would do several things. First, it would dramatically decrease board administrative costs which are high as a result of experience rating and the constant tinkering with the assessment rate groups.

Employer appeals to shift costs from their own account and rate group to the second injury enhancement fund would be eliminated. The appeal system, presently clogged with employers seeking to have workers' claims disallowed, would work more efficiently.

Finally, it would require firms in presently low-cost rate groups to pay their fair share. These firms exist in Ontario because of the economic engines of the province: manufacturing, mining and forestry. These economic driving forces must pay high assessment rates, yet they are critical to the survival of the firms in the low assessment rate groups. We submit that the load should be shared among all Ontario industry by the establishment of a flat-rate assessment system.

The flat-rate assessment system is in effect for unemployment insurance and Canada pension where, regardless of the likelihood of unemployment or the date of the workforce, all employers pay the same rate. The same system should be established for workers' compensation.

Subsection 103(4), penalty assessments: Subsection 103(4) of the statute provides for the establishment of a penalty assessment system which would be a preventive system and a sound alternative to the experience rating system. The present prosecution method of enforcing the provisions of the Ontario Occupational Health and Safety Act and its regulations is time-consuming, ineffective and is an after-the-fact system, since it so often requires a fatality or a serious injury before judges will convict employers or impose high fines. An additional enforcement mechanism is needed.

On that note, we just lost one of our members last week through an underground mining accident. It points the way to some of the problems in the system.

Subsection 117(3): We presume this subsection is considered redundant and we support its deletion.

Subsection 137(4): We support this proposal wholeheartedly and are appreciative that the same rules will apply to schedule 2 employers as to schedule 1 employers although, as we've stated, a better solution would be to collapse schedule 2 into schedule 1.

Subsection 147(14): We wholeheartedly support the \$200 increase for pre-Bill 162 pensioners. You've heard others talk here at the table about the hardship on workers and we won't go into that. But by tying the very welcome \$200 increase to the supplement we expect even more adversity on the issue of the entitlement of deserv-

ing injured workers to the supplement. Once more it will be nearer in practice:

"(c) if the worker makes application to the board and is determined to be receiving an inadequate permanent partial disability award."

Clause (b) would need to be amended to add the word "or".

The Vice-Chair: If I may interrupt right now, you have about three minutes left.

Mr Hrytsak: Thank you. That's in total, Mr Chairman?

The Vice-Chair: In total.

Mr Hrytsak: Okay. The rest of the brief, I'll simply say to you, is in the same tone, with suggestions. I know they're going to be recorded into Hansard in total anyway. It doesn't necessarily have to be read, so I'll leave that with you.

The Vice-Chair: That's not correct. It's just what's spoken here in committee.

Mr Hrytsak: Then I'll read the whole bloody thing.

The board views medical payments, physical rehabilitation etc as part of the unfunded liability when there is not legal obligation under the section to do so. The unfunded liability is thus artificially inflated due to the board's improper accounting practices. If the board's fund has sufficient moneys in it to pay for all future pension obligations, it is said to be fully funded.

Mr Martin: Mr Chair, on a point of order: To the presenter, what you've got here may not be in Hansard but it becomes part of the record. The government has it and we're able to look at it and read it and consider it when we—

Mr Mahoney: I have an idea. We can deem it having been read.

Mr Hrytsak: You know, that's actually a very good statement from you, Mr Mahoney. In some of the things that I've seen, your Back to the Future and other things, you've deemed a lot of things and they're really not real at all.

The Vice-Chair: In fairness, let the presenter continue.

Interjection.

The Vice-Chair: Mr Martin, in fairness—

Mr Hrytsak: I'd rather answer some questions. I'm quite ready for any donnybrook that's necessary here.

The Vice-Chair: In fairness, let the presenter finish.

Mr Hrytsak: If you wish to deem it into the record, I have no problem with that either.

Interjection: I don't know if you can do that.

Mr Hrytsak: It's just that there is so much to talk to and there are so many things to speak to that the presentation itself, in all fairness—

The Vice-Chair: I don't know whether that's possible. I would advise you to continue reading the presentation until you're finished.

Mr Hrytsak: Okay, Mr Chair, and I believe we're somewhere at the board's funds.

The Vice-Chair: I'll give you the extra minute.

Mr Hrytsak: I appreciate it.

The unfunded liability is thus artificially inflated due to the board's improper accounting practices. If the board's fund has sufficient moneys in it to pay for all future pension obligations it is said to be fully funded. If it has more than enough to pay for these obligation it is said to have a surplus. If it has less money than it needs to pay these obligation it is said to have an unfunded liability.

Is the magnitude of the unfunded liability a problem? An unfunded liability of some \$11 billion seems like a lot of money, and of course it is, but the board has capitalized reserves of \$6 billion and that's a lot of money in the bank. Let's make a comparison. If you had a mortgage on your house of \$110,000, with \$60,000 in the bank and a steady income, you would not be overly concerned about your future ability to make your mortgage payments, now, would you?

We believe the employers are using the unfunded liability in the same way they use the federal deficit: as a way to frighten people into thinking that social programs must be forfeited. The cause of the federal deficit is the same as the cause of the unfunded liability. In the past, corporations have not paid their fair share of taxation, so the federal deficit has mushroomed. The same is true for the unfunded liability. Corporations have not paid sufficient assessments in the past to cover future obligations.

Section 139: The issue of coverage is important. We recommend that the provisions of section 139 be deleted and replaced with a requirement that all employers in the province of Ontario be covered by workers' compensation.

Subsection 148(1): After decades of lobbying, we finally won full indexing in 1985. The Friedland formula proposes to erode pension indexing dramatically. At 4% inflation, the Friedland formula will only protect half of the erosion of an injured worker's pension caused by inflation. If inflation goes beyond 8%, the indexing will protect less than half of that figure.

What is the cost-saving to the board of the Friedland formula? We've heard varying figures—\$13 billion, \$18 billion, \$23 billion and \$27 billion—from a variety of sources, from the board to the employers to the government itself, which proposed the change. Whatever the future, it's a large amount of money, and whatever the figure, it will come directly from the pockets of injured workers. We recommend that the Friedland formula be scrapped and that the present full indexing formula of subsection 148(1) be retained.

Universal disability. This is an issue dear to the hearts of us in the Canadian Auto Workers and my Local 598. We cannot let an opportunity go by to state in the strongest possible terms the support of our union for a universal disability system. This is the most important issue for the royal commission to consider. We want to ensure that the government fully supports the royal commission's consideration of this issue, since the terms of reference for the royal commission were not explicit.

Too many disability plans. The magnitude of agencies, private and public, provincial and federal, all attempt to do versions of the same thing, yet each has its own rules. These rules are based on what causes the disability and as a result of this too many people have now fallen through the cracks of the system.

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Financial costs. Our society wastes enormous resources by having so many agencies attempting to do similar things.

Social costs. Far too many people must anxiously await rehabilitative or monetary benefits while agencies make their eligibility decisions. Delay produces anxiety and often makes recovery more difficult. Some people will be denied benefits by all agencies. Immediate physical rehabilitative help is vitally important in many types of injuries, back cases being the best example.

Enormous losses to society, both in dollars and in human costs, could be saved by replacing the present competing systems by a single universal disability plan.

Our interest in what causes injuries and diseases is to ensure that work-related injuries and diseases are paid for by employers as a tax at the point of production. This is the workers' compensation assessment system. We want to ensure that these costs are not shifted on to the taxpayers. We feel that such an accounting system can be continued under a universal disability system.

Occupational diseases. The reality is that employers at present are not paying for much of the cost of the workers' compensation system because they pay for only a tiny fraction of the actual number of occupational diseases. Workers' Compensation Board claims are successful for occupational diseases.

We believe the only way employers will be compelled to pay the cost of occupational diseases will be if the costs are assessed to industry on a statistical basis. For example, if the universal disability plan agency decided to say that 5% of all cancers were work-related, then 5% of the costs of the cancer victims should be assessed on industry. Also, you must know that under the NEER system occupational disease is exempt from that particular situation.

Justifiable and affordable. Professor Paul Weiler's second report on workers' compensation to the Ontario government in 1983 concluded that, "...we are logically driven to embrace a general disability scheme which would displace tort liability and incorporate workers' compensation and other categorical forms of no-fault insurance." Although he called for priority to be given to long-term disabilities rather than short-term injuries, he showed by "...such a program of social disability insurance is both justifiable in principle and affordable in practice."

Vision and courage. We need the Ontario royal commission to thoughtfully consider how to introduce a universal disability plan.

That's the brief we are presenting to you today, Mr Chairman. I apologize for the length of it, but the intricacies of this particular Bill 165 demanded that each one of them be spoken to.

The Vice-Chair: Thank you. I understand you were up till 5 this morning signing a contract with Falconbridge?

Mr Hrytsak: I've been up for the last almost 48 hours and we did sign a tentative agreement this morning at 5:30, yes, sir.

The Vice-Chair: On behalf of this committee I'd like to thank the Sudbury Mine, Mill and Smelter Workers Union, Local 598, for their presentation to this committee.

Mr Hrytsak: Thank you, Mr Cooper.

Mr Offer: You're opposed to the bill?

Mr Hrytsak: We are opposed to the bill.

COLLEGE COMMITTEE ON SPECIAL NEEDS

The Vice-Chair: I'd like to call forward our next presenters from the special needs in employment and education equity committee. Good afternoon and welcome to the committee.

Ms Susan Alcorn MacKay: Thank you very much. I usually hate to go last, but I'm so pleased to be here in any capacity. I hope you can bear with us. We'll be brief.

My name is Susan Alcorn MacKay. I'm from Cambrian College and Laurie Barbeau is from Sault College. We want to address a few comments. We're only going to speak to the six items that we have on the first page. The rest of the material is for background.

We're speaking of the injured worker in post-secondary education attempting to become retrained in order to re-enter the workforce, in particular a group of lost guys who are students and who turned out to have a learning disability in addition to their work-related accidents.

In reviewing Bill 165, specifically references 9 and 10 where there's the vocational aspect, we just thought they were a tad sketchy and that some more fleshing out would really help.

First, we'd really like to see that there be specific guidelines available to the WCB counsellors, to the employers and to the injured workers themselves so that they know exactly all the specifics and all the different things that can be done in order to accommodate their disability and to complete their academic instruction.

Ms Laurie Barbeau: Our second point is in relation to a vocational rehabilitation plan, that designing that rehabilitation plan include continued education or upgrading and that consideration be given to the inclusion of upgrading before a rehabilitation plan is solidified.

Oftentimes injured workers will enter a training plan, an educational plan, and then discover that maybe that wasn't the most appropriate or they didn't have all the preparation they needed to have in order to be successful in that program; so an upgrading time and, if you will, I'll use the term "transitional." Most of these people having not been in education for quite some time, it allows them the opportunity to overcome some of the barriers and it allows the college system to be able to identify the learning disability and what kinds of accommodations are appropriate for them.

Ms MacKay: Third, we'd like to suggest that a retraining plan for persons with disabilities or academic

barriers should be flexible and that the training time allow time for the injured person to get the proper training.

On the second page, under "Background," we just have a couple of barriers that injured workers in general have when they come to college. If you consider all of these barriers and the effects of the disability or the injury, to put them in a full-time, post-secondary program and expect them to do the same job as grade 12 graduates, with mother making their meals for them and having their clothes ready for them, is just an unrealistic expectation.

In fact, in preparing for this, coming back to school, I have spoken to seven injured workers, and when I told them I was going to address the subcommittee, they all jumped and said: "Tell them about time, for heaven's sake. We're going nuts." There's so much stress on them, so much pain and anguish that it just makes the time to complete a really rigorous program very difficult.

Laurie and I have both worked in special needs for about the last seven or eight years and we've seen hundreds of injured workers, and that's one theme that comes across: They can't do it in the same time that everybody else can. If there's just some understanding that in reality the time to complete will actually be less if it's done properly, as opposed to taking six months off or a year off because of stress or extra pain that takes them out of the education system—popping in and out actually takes more time than doing it right the first time.

Ms Barbeau: It also prevents them from re-entering work, whether it be a new job position or whether it be returning to their employer in a modified work situation or whatever. Our experience has been that the time factor and the flexibility and consideration of that is really more productive in the end.

Fourth, in relation to rehabilitation counsellors with WCB, we suggest they be given the opportunity for disability awareness and training as part of their ongoing professional development. As counsellors with students with disabilities, we ourselves have experienced that modern technology impacts on the kinds of delivery mechanisms and accommodations that are available to individuals with disabilities, so we need to continually be upgrading our knowledge about what is out there and what's available and also what is happening in research related to various disabilities. To be current with all that information is really important.

Ms MacKay: We thought we'd help you out today too. We've given you, on pages 2 and 3, a brief definition of learning disabilities, not expecting that everybody here is boned right up on what that means, and also the effects of learning disabilities on adults. Again, it's different. If you know of a child in high school or in elementary school, the effects of a learning disability on them are one thing; the effects on an adult, especially experiencing pain from other injuries, are really quite a different story.

Fifth, we'd also like to suggest that the assistive devices required by a person with a disability in education settings—that's not just a learning disability but a physical disability—be available early in the educational plan and that those devices should belong to the student,

because they're the same devices that are going to get them back to work and get them retrained and into a valuable situation as a good employee.

Ms Barbeau: And that's a benefit to the employer when the employee returns or ends up in another environment. They come with the technology they need, the devices they need, and they already know how to use them.

Our sixth recommendation is that in the event a student is considered for retraining through a local community college, linkages be made with the special needs office of that college to assist in the formulation of an effective educational plan.

The 23 colleges of Ontario have moved to focus on centralization of service delivery and trying to have the college system respond to our students with disabilities in a typical manner so that you can expect some sort of standard with a retraining individual. So we have moved to develop common understandings of what we do, and we think that would be of benefit to the Workers' Compensation Board, the counsellor, the employer and the individual involved in retraining. Then we all understand what's going to happen.

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Ms MacKay: On page 3, we have some general suggestions that just take the six main points a little further or explain them a little more. Then on page 4, we didn't want to leave you without some potential benefits. There's an upside to all of this. You're going to get better-trained workers back into employment.

There are going to be some spinoff benefits to employers, we think. For instance, there's one piece of equipment called the Dragon Dictate, which is a voice input computer, so a person who has quadriplegia or severe impairment of the arms can speak into a microphone and the words are processed.

We know of one employer who hired a person who had this equipment. It's a pizza delivery place and they could make pizza deliveries far faster by talking on the phone, speaking into the mike and getting the information out to where they needed. So this injured employee brought to the workplace a more efficient manner of doing things, and that's really what we're after, a more efficient manner of doing things in the workplace, for that individual and for all people.

So I think there are going to be some advantages to employers and we'd really like to work in concert with any vocational plan or any counsellor or make any suggestions or contribute our expertise as members of special needs in the Ontario college system.

Thank you very much. It's been a pleasure. If you have any questions, we'd be delighted to answer them.

The Vice-Chair: Thank you. Ms Fawcett.

Mrs Fawcett: Thank you very much for bringing this expertise to this panel. Having been in the educational system myself, I realize the importance of education, and doing it properly. Do you have any input into the WCB right now at all, in any capacity, or is your only input the clients who come before you?

Ms MacKay: As a provincial body, the College

Committee on Special Needs does maintain some linkages with certain WCB bodies, but it's mainly by memo and there doesn't seem to be a good flow. There's no nice flow of information back and forth.

We see the student with the educational plan already in effect. We see the students after they've been identified and assessed by endless different areas and we generally only see them when they are in trouble. They are ready to give up, and somebody says, "Hey, why don't you go and see the special needs office?" We'd really like to see them before the trouble starts and before the plan is even made. Sometimes in a half-hour discussion we can figure out, "That guy's in the wrong program," or he needs a whole bunch more preparation of a different nature.

Mrs Fawcett: So you could save a lot of time and all of the stress and so on.

Ms MacKay: Definitely. We could save money.

Mrs Fawcett: And that's most important.

Ms Barbeau: And our knowledge about the academic programs themselves, how they're delivered, what accommodations can be put in place, all of that side of it that the individuals experience from the day they enter the college program would be of benefit prior to their getting there. A lot of that can be done ahead of time.

Mrs Fawcett: Thank you very much. I don't know whether my colleague has anything further.

Mr Offer: Your summary of recommendations, in your opinion, do they require—and I'm sort of looking at the government also—legislative amendment if one wanted to embrace them? Or is it done mainly by guideline or policy?

Ms Murdoch: It would be policy; it wouldn't be legislative.

Mr Offer: That would be sufficient for your purposes also?

Ms MacKay: Whatever works. Whatever is going to streamline everything, whatever is going to make things easier is fine with us.

Mr Offer: Thank you very much for the presentation. I appreciate it.

Mr David Johnson: I thank you as well. Your presentation is somewhat intriguing because it's a little different from the others. I don't know how long you've been here today, but it's certainly a different kind.

Ms MacKay: Long enough.

Mr David Johnson: It's certainly interesting. I wonder if you could just tell us a little about your experience. We're talking about injured workers. How many people are we talking about, how many injured workers? You're with Cambrian College, but what numbers?

Ms MacKay: I see about 50 to 60 injured workers a year, so through the last seven or eight years, a few hundred. But those are the only ones I see. There are far more who drop out. They just give up. They get heart attacks. I had one student come to me and he didn't keep his appointment because he had a heart attack. It was stress-related. I had two students commit suicide—and

that's just in Cambrian College—before we could get some strategies into place for those people. The stress had gone too far.

So I would say we're both dealing with a few hundred students a year at each of our colleges, times 23. Most of our WCB people we see in post-secondary are there because they have an injury and they are there because of retraining.

Mr David Johnson: You're only seeing the students who are undergoing some stress and need some counselling. Is that the situation?

Ms MacKay: We will see the students who come forward and disclose to us that they are involved in programming and that they're running into some difficulties or they anticipate that they might run into some difficulties. So it is really their onus to come forward to say they're in our programs.

Mr David Johnson: Just on the timing, because you stress that in your presentation and you said the students stress that as well, what typically is the period of time they would be at the college and what sort of courses are they in? Is that all over the map, or are there any particular kinds of courses they're taking?

Ms MacKay: They often end up in courses like civil engineering and electronics because that is the same pay rate as they have had as miners working overtime, not necessarily programs that they're suited for. And even though their assessment might show that they have the intellectual capacity for it, they've been out of school for 20 years, they don't know the fine print. So they come to our upgrading system and in our upgrading system, every so many weeks you have to progress. It has to show progress and you have to be ready before you start your post-secondary program. For many of these people it's simply not a realistic expectation, especially the students with learning disabilities.

On top of that, they'd get thrown out because they can't keep up with the time element, whereas if accommodations were put in place, we could speed them through much faster.

Mr David Johnson: Your hope would be that they could spend dedicated time there to complete the whole program. Is that the essence? I'm surprised that you can do a program in that short period of time.

Ms Barbeau: I think what Susan and the students have highlighted is that their rehab plan will commit two years, for example. You must complete this electronic engineering technician diploma in two years, so that's the time frame. When they run into difficulties, oftentimes we'll recommend reducing their course load because of all the factors they're dealing with: pain, stress, anxiety, a learning disability or whatever. A reduced course load might be very effective. Rather than do the program over two years, you could spread it over three years, but then they are successful.

To pressure them to do it in the two years, we're talking probably 25 to 30 hours of class time in a program like that. That's pretty extensive. Then you're going to add at least that many hours probably in homework time or computer time work or whatever. What we're

suggesting is that the flexibility would be that they don't take the 25 or 30 hours, that you reduce the load they have, because it's more manageable, and you can build in the other accommodations. Then in three years they are successful and they're out to work, instead of after one semester they're leaving and they're nowhere.

Mr David Johnson: I'm probably running out of time, but one of the distressing statistics, I guess, that I've heard today at any rate—it's my first day on this committee—is that 40% of injured workers are unemployed, and my guess is that the kind of training you're giving is among the more sophisticated and it's more likely that people would attain some sort of employment after completing it. I wonder if you had any follow-up statistics of what your success rate would be. I would guess your success rate is much better than average.

Ms MacKay: I have no statistics for you, but yes, when things are properly laid out the student is a part of the whole plan. They're committed to the plan and they really feel that this is something they're going to achieve, not just on graduation but for the rest of their lives. Then they all succeed. It's the ones who end up in a program they're not suited for because their WCB counsellor said, "Look, you have to be making the same amount of money as you were and you were making \$60,000 on overtime," when really the guy should be a mechanic or should be a carpenter or should be something else.

Really, when we work in concert with the student, to their academic ability and to their own interior motivation, they all can be successful. Maybe they're not going to be employed at \$60,000, but they're going to be employed.

Mr Fletcher: Thank you. I'll be brief. Yesterday in London we heard from a person, I believe his name is Bill Such, who had injured himself and went back for retraining. I think his course was six months, eight hours a day, five days a week. He tried to make accommodation because he couldn't sit for that period of time. He used a podium but that didn't work, and eventually he just dropped out. He couldn't do it.

I'm wondering if that's under the auspices of the Workers' Compensation Board or if it's under the school itself. Are you saying that the school can make accommodation, should make accommodation? You don't need legislation to make accommodation for people. Are colleges moving in that direction?

Ms MacKay: Yes, there's no problem with accommodations in college. But if the WCB plan says, "You must enter the program on September 6 and you must graduate in two years," then there's sometimes not time for the accommodations to be in place. I have many students who use podiums, who must stand and walk around the room, who have to lie down every so many hours. But if they have four hours of straight class and they know they need to lie down, then they have to drop out of that class. If the plan could be extended so that there was time for them in respect of their pain, then they could complete eventually, instead of just dropping out and giving up.

Mr Fletcher: That's time from WCB and also the accommodation of the college.

Ms MacKay: That's right, yes.

Mr Fletcher: Okay. Thank you.

Ms Barbeau: I also think you can't ignore that summer school opportunities exist too. So when we're talking about extending a program over three years, in our minds it's like six semesters, but that doesn't mean it's a full three-year plan. They could still be enrolled in a reduced load during summertime as well. I just wanted to clarify.

Ms MacKay: If we had the flexibility to help plan, there's not much we couldn't do.

The Vice-Chair: Ms Murdock.

Ms Murdock: Thank you very much, Mr Chair, particularly, you see, because Susan is from my riding; not that I'm not pleased to see Laurie here too. Susan and I have talked about this before. It's interesting and it's been a pleasure to hear something different from the past week and a half.

The Vice-Chair: Refreshing.

Ms Murdock: Very refreshing. Part of Bill 165 is the whole aspect of early intervention and getting people assessed early and determining what their needs are early, within 45 days ideally. I realize with all the things that happen at the board that's going to be a problem and they're going to need additional resources and so on, but nevertheless that's the goal.

When are you getting your people, number one, and, number two, are there limitations put on by the board that students have to drop out, say, even if they aren't having difficulties? They've been accommodated, they aren't having difficulties but their time is over and done and they have to leave the program? Do you have that experience?

Ms MacKay: Yes, and usually what happens is students are under so much pressure because they haven't finished and they're getting these daily calls. I have students tell me that while they're at school, their WCB counsellor will call their wife and say, "Your husband's finished as of Friday because his academic success hasn't

shown," or "He's dropped out of one course; that means he's not going to finish the course." He can't pick up that one course. I've seen them literally just give up, just come in and drop the books and say, "I give up; I can't battle everybody."

We don't need to be that way. We don't need to be adversaries. We can work together. In that 45-day plan, the student can be in upgrading. They can be starting a very calm, relaxed, quiet upgrading. There's nothing like routine to really have a person demonstrate what he can do. Even within that plan they can start their upgrading.

We don't see them till the plan's all done. It's all figured out. They've been assessed physically, intellectually. We can start giving them schooling, get them in a routine, get them organized, calmed down, feeling good about themselves while the whole assessment procedure's going on, and then at the end of those 45 days you have a true picture of what the student can do. The student's relaxed, not so stressed, and I think there's a better chance for success.

Ms Barbeau: The availability of what there is to support that individual while he or she is learning could be incorporated into that. I don't know that 45 days is reasonable, but I think we welcome the opportunity to be a partner in that process.

One of the questions you asked about was, when do we see our students? Oftentimes it's not until they have registered and they are in a program that we are aware of them. So a lot of times they're already in and running.

The Vice-Chair: Thank you. On behalf of this committee, I'd like to thank the special needs in employment and education equity from Cambrian College for its presentation to the committee this afternoon.

Ms MacKay: Thank you for the opportunity.

The Vice-Chair: Seeing no further business before this committee, this committee stands adjourned until 10 am tomorrow morning in Ottawa.

The committee adjourned at 1614.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Président: Vacant

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Carr, Gary (Oakville South/-Sud PC) for Mr Turnbull

Fletcher, Derek (Guelph ND) for Mr Huget

Johnson, David (Don Mills PC) for Mr Jordan

Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Conway

Martin, Tony (Sault Ste Marie ND) for Mr Wood

Clerk / Greffière: Manikel, Tannis

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Third Session, 35th Parliament

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Thursday 1 September 1994

Journal des débats (Hansard)

Jeudi 1 septembre 1994

Standing committee on
resources development

Workers' Compensation and
Occupational Health and Safety
Amendment Act, 1994

Comité permanent du
développement des ressources

Loi de 1994 modifiant la Loi
sur les accidents du travail et la Loi
sur la santé et la sécurité au travail

Vice-Chair: Mike Cooper
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Thursday 1 September 1994

Jeudi 1 septembre 1994

*The committee met at 1005 in the Delta Hotel, Ottawa.*WORKERS' COMPENSATION AND
OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL ET LA LOI
SUR LA SANTÉ ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

APPAREL MANUFACTURERS-MARKETING
ASSOCIATION OF ONTARIO

The Vice-Chair (Mr Mike Cooper): We will be continuing our public deliberations on Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act.

I'd like to first call forward the Apparel Manufacturers-Marketing Association of Ontario. Good morning, and welcome to the committee. Just to remind you, you will be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat briefer to allow time for questions and comments from each of the caucuses. Could you please identify yourself for the record and then proceed.

Mr Jason Mandlowitz: My names is Jason Mandlowitz. I'm with M.C. Warren and Associates Inc. There are people here in addition to the apparel manufacturers, as you will see, but they are all listed on our submission as supporters and contributors—Mr Glen Grant and Mr Michael Daley, Domtar Fine Specialty Papers in Cornwall; Mr Dean Powell, city of Belleville, representing the Municipal WCB Users Group; Mr Bob Kirke, Apparel Manufacturers-Marketing Association of Ontario; and Mr Paul Mulligan, city of Nepean, representing the Municipal WCB Users Group.

Our core submission has been distributed to you. You will recognize it is as being identical to the submission we presented in London. It's for your convenience, therefore. Our comments today—which is the smaller document—are different from the comments in London. There will be, however, some similar introductory comments to address to the new members of the committee, and I see that there is a membership difference here today as compared to London.

Mr Kirke will make a very short comment and then I will come back and make our comments with respect to Bill 165.

Mr Bob Kirke: I'd just like to make a few remarks because we will be running very short on time. The association came forward to participate in this session because we feel workers' compensation is a very important issue for our members. Our industry employs directly about 23,000 people across the province in virtually all parts of the province although we're concentrated in Toronto. We will be more than happy to provide any kind of details around employment or WCB issues and/or assessments for our industry, as I believe any of the other people presenting here would be. We could table it with the clerk or make it available to the committee in some other way. So I'll pass it over now to Jason, who will go through the major points of our submission. There may be some chance for questions afterwards.

Mr Mandlowitz: These employers and those on our submission have a number of concerns with Bill 165.

We support in the strongest possible terms maintaining the current experience rating programs now in place in Ontario. They have proven to be successful vehicles for encouraging employers to control WCB costs and be measured for rebates or surcharges on the basis of real performance. The efficacy of the new experimental experience rating or NEER program has been confirmed by several WCB studies, internal and external. Any concerns which this committee or the government may have regarding rebates under experience rating should be offset by a recognition that for each dollar of rebate under NEER many additional dollars in compensation costs have actually been saved.

The ratio of NEER rebates to savings to the system would be a useful future research project for the WCB or the royal commission.

We support the application of the Friedland formula to all injured workers receiving compensation from the Workers' Compensation Board.

We support deleting from Bill 165 any reference to government policy direction to an arm's-length, independent agency.

We submit that Bill 165 has a number of failings. It fails to articulate either a comprehensive set of principles or a clear vision for workers' compensation reform. If enacted, it would require implementation by the WCB concurrent with the work of the royal commission, whose efforts would be made more difficult. It would require implementation, and lengthy implementation, at a time when the WCB today continues to wrestle with the aftermath of Bill 162. The WCB faces imposing policy and service delivery demands. Bill 165 would only

complicate the mess. I'd just point out that the presentation that we made in London addresses these issues in greater detail.

Today we will be focusing on, specifically, the purpose clause, governance, the memorandum of understanding, payment of benefits interjurisdictionally and pension enhancements. While we will not review all of our concerns today, we wish to emphasize that the employers here support them, share them and recommend that Bill 165 be stayed until the royal commission has completed its work and provided a report to the government of the day. We are quite prepared to work with the current act until the work of the royal commission has been completed.

Purpose clause: We submit that the purpose clause in Bill 165 is inadequate and must reflect the true purpose and object of workers' compensation legislation while remaining true to the principles established by Meredith.

We recommend that the financial responsibility framework agreed to by the PLMAC be added to the purpose clause in Bill 165.

Page 12 of our submission, which was distributed, provides background on the purpose clause already enacted in the Yukon. It embraces a full range of purposes or objects for workers' compensation, including fair and adequate compensation, rehabilitation, the solvency of the compensation fund, fair employer assessments and other important issues.

The Workers' Compensation Act is clearly one which addresses benefits, rehabilitation and health care issues, which should be reflected in a purpose clause. However, all of regulation 1102 and over 60 sections of the current 151 sections in the act refer directly to funding, assessment, revenue or cost issues. In addition, the Workers' Compensation Act, apart from board policy, establishes 28 sections where penalties or non-assessment costs are issued against employers. Bill 165 adds another five penalties or cost centres.

It is submitted that this recognizes the importance of financial and fiscal matters in workers' compensation, issues which must be reflected in the purpose clause.

Governance: We support the recommendations made earlier in London by M.C. Warren and Associates on governance, which include adding the word "and" after the proposed paragraph 56(1)4 to ensure the WCB chair is not also a director of the board of directors, adding a section detailing the duties of the chair, adding the WCB president as a non-voting member of the board of directors, and requiring that meetings of the board of directors have a quorum of seven members with at least one each from the various stakeholder communities.

Bill 165, however, fails to address the duties of the board of directors in the context of final say and final determination. The Workers' Compensation Act has established two adjudicative processes, one at the board and another at the Workers' Compensation Appeals Tribunal. In fact, these are parallel and different processes, with unique rules of procedure and evidence as well as interpretation of law and policy. This situation has complicated the workers' compensation process and

added significant direct costs to the system.

It is noteworthy that the government of Newfoundland has recently disbanded the WCAT, the Workers' Compensation Appeals Tribunal, in that province and replaced it with a more streamlined Workers' Compensation Review Division within the WCB. Cases will be heard by one individual and review commissioners will have no authority to interpret WCB policy. The review commissioners will review compliance with policy and order remedies as needed.

In Ontario, board of directors' review of WCAT decisions has been limited and has failed to clarify the issue of final say.

We recommend that this committee consider the matter and adopt the position that final say or final determination rests, as conceived by Meredith, with the WCB. All decisions of the board of directors would have predominant standing and become effective from the date when the decision was rendered.

In recent years, increasingly more decisions made by the workers' compensation system have touched the issue of retroactive effect. This is another area of conflict between WCB and WCAT decisions. It is recommended that this committee review and support the policy of the WCB of New Brunswick for use in Ontario. A copy of that policy is appended to our submission.

Finally, we recommend that all board-of-director decisions should be considered public information and made available as soon as possible and not later than 30 days following the date a decision is rendered.

Memorandum of understanding: We support the undertaking of a memorandum of understanding between the government and the board. The wording of this section in Bill 165 requires that the memorandum of understanding, which I'll refer to as an MOU just to save some time, apply only to the WCB. It does not state that a symmetrical requirement shall apply to the minister. We recommend, therefore, that this section be amended to reflect a symmetrical requirement for both parties.

Subsection 65.2(1) requires that a memorandum of understanding, an MOU, be entered into at least once every five years. This provides an important opportunity to revisit the purpose, sustainability and accountability of the WCB. It is recommended that, concurrent with the process of establishing an MOU, an external review committee composed of stakeholders be established as a regular feature of ongoing review of workers' compensation. The Saskatchewan experience may serve as a useful model for consideration. Details of section 162(1) of the Saskatchewan act are provided on page 24 of our submission for your consideration.

It is recommended that the committee specify in Bill 165 that in the course of establishing the first memorandum of understanding between the minister and the board, the board be required to file a five-year strategic plan, including a comprehensive financial plan, outlining the principles and actions which will be taken to adequately fund the WCB and address the containment and reduction of the unfunded liability.

Regular reviews of the workers' compensation system

will ensure it remains in step with the dynamism of the workplace and development in health sciences. This type of review by stakeholders will also properly identify and distinguish between policy and legislative issues and is able to make important and timely recommendations, not relying on periodic royal commission studies.

If not already in place, Bill 165 should also require that MOUs be established between the minister and every agency now involved in workers' comp issues, such as the offices of the employer and worker adviser, the Industrial Disease Standards Panel, WCAT, the Workplace Health and Safety Agency and others we may have missed.

Payment of compensation where benefits have already been provided by another jurisdiction: Bill 165 provides that no compensation should be payable if a worker or dependant has already received such under the law of another jurisdiction in respect of an accident. Bill 165 fails to address corrective measures should dual payment have occurred.

It is recommended that Bill 165 be amended to add that where payment of compensation has been made and where the worker or dependant has received compensation contrary to subsection 8(7.1), recovery of the overpayment be pursued by the board. All cases of overpayment involving interjurisdictional matters should be regularly reported to the board of directors with full details on the status of recovery actions.

Finally, pension enhancements: Bill 165 proposes to amend section 147 to provide an additional \$200 per month to injured workers under certain circumstances. The business caucus of the PLMAC agreed to consideration by the government of pension increases for pre-1990 injured workers only if additional costs to the system would be offset by the existing revenue base after the application of the Friedland formula to all workers. Bill 165 fails to address the issue of sources of revenue. The only possible conclusion available is that pension enhancements would come from current and future WCB assessments on employers.

1020

Having noted this, the concern we wish to express today is the inclusion not of the pension enhancement but of the fixed sum in the act. Generally speaking, regulations have been the place where specificity has been attached to legislative initiatives. To maintain consistency with the evolution of workers' compensation statutes, it is recommended that the proposed new subsection 147(14) be reworded to specify that the WCB shall review worker entitlement to additional sums under subsection (4) or, if the worker would be entitled to a supplement under subsection (4), pay an additional amount to a worker receiving a permanent partial impairment award and determine the quantum of the payment, having regard for regulation and disability.

Those are our opening comments. We thank you for the opportunity to present today. If there's time permitting, we welcome questions.

The Vice-Chair: We have time for about a minute and a half each.

Mr Steven Offer (Mississauga North): Thank you for your presentation. I basically have a two-part question, very briefly. It deals with the first part of your submission and the purpose clause. As you will know, on April 21, by a letter, Premier Bob Rae promised that, "A purpose clause will be added to a the Workers' Compensation Act which will ensure that the WCB provides its services in a context of financial responsibility." That does not appear in the legislation. Is it your position that you would be satisfied if the government lived up to the promise that the Premier made on April 21?

Secondly, below the surface of all of this, dealing with benefits and the purpose clause, is the issue of the unfunded liability. As you know, we have been both in Toronto and travelling throughout the province, where this is an extremely real issue. Many people have spoken to it. I'm wondering if you might share with us your thoughts and comments on issues around the unfunded liability.

Mr Mandlowitz: One short answer and one lengthy answer that could take the rest of the day. The answer to the first question is yes, we support and have recommended that the PLMAC accord purpose clause be reproduced as the purpose clause for the act.

With respect to unfunded liability, the submission details why it's a problem. Our comment in London suggested that looking at 1994 data, the WCB established that the target assessment rate for schedule 1 was \$3.20. Without the unfunded liability add-on, it would be \$2.31. That would position us very competitively with other jurisdictions. So it is a problem from an assessment and cost perspective to the system and to employers in the short term and in the long term.

On the unfunded liability—and I will speak very quickly—let me tell you what I will tell the royal commission: that the time has come to take bold, courageous and controversial action to address the unfunded liability. It can only, in our judgement, be attacked if you look at the asset side and the liability side simultaneously.

I'll give you a bit of a shopping list, which I'll flesh out with the royal commission. On the asset side, obviously, aggressive, flexible investment strategies are required to enhance the portfolio on an ongoing basis. A courageous measure to bring more revenue into the system is to introduce an employer amnesty, allowing for employers who for whatever reason are not registered with the board and should have, to come forward at no risk. Today, if they do, they are facing a retroactive penalty of six years. They ain't gonna come forward facing that kind of penalty. We know that firearm amnesties have worked and we know book amnesties have worked in libraries. I think an employer amnesty is worth a try and is virtually a no-cost measure.

In addition to that, a third measure is to review the adequacy of the current discount rate that the board uses for valuing assets. I'll come back to that, if you like.

The Vice-Chair: We won't have time, so you'll have to quickly hurry. I've already extended time.

Mr Mandlowitz: On the liability side, look to jurisdictions that have been successful. What have they

done? They've deindexed their act, they've reduced benefits, they've established waiting periods, they've looked at privatizing services. Most importantly, they've reviewed the definition of "accident" and have moved to ensuring that you only pay compensation where there's a predominant and direct relationship to the workplace.

Mr Gary Carr (Oakville South): Thank you very much for your presentation. You certainly have an impressive list of companies that you represent.

I was reading the *Globe and Mail* this morning, page 3, I guess, of the Report on Business. For those of you who may not have read it, there's a headline: "N.B. Plans Fee Cuts to Workers' Compensation Fund. Firms May Get Reductions of 18%." It goes on to say that their assessments are "\$1.70 for each \$100." This compares with "\$3 for each \$100 in Ontario." It also goes on to say that their unfunded liability is much better as well.

I think you're right. You don't need to reinvent the book; all you need to do is look at other jurisdictions. Alberta, Manitoba, New Brunswick are doing some good things. That's all you need to do if you have the political courage to do it. I think you realize this government does not; I think that's why the royal commission was set up, in order to fluff it off under another commission.

The good news is that as each day passes, we are slowly getting closer and closer to the end of the mandate of this government, and I don't think there's anybody in their right mind who believes that the NDP will be elected again.

I take it then what you would like to see done is some of the things that have been done in Alberta, Manitoba, New Brunswick, so that hopefully some day we'll be able to say the same things that we see here. Is that what you're basically saying to us?

Mr Mandlowitz: Agreed. Page 7 of our submission details some of the additional measures that other jurisdictions have taken.

Mr Derek Fletcher (Guelph): Thank you again, Jason, for your presentation. Some of what you say I agree with; some of it I don't. When we talked in London, we were talking about how difficult the job is.

The concept of workers' compensation, when it first started, was to compensate a working person for an injury, and also to try to get that person back to work. Somewhere along the way, since the beginning of workers' comp, something's gone wrong. Again, here we are, the government of the day, in the position—as with many other things that have gone wrong from previous governments, we'll fix it.

I think the royal commission's the right way to go. The royal commission will really examine what workers' compensation is all about and how we can get back on track as far as the actual concept of what workers' compensation is all about. Let's forget the politics of everything else, about this government or that government; let's get to work on the issue.

I appreciate your presentation as far as some of the suggestions. What do you expect from the royal commission? When we finally get to that stage, the royal commission, what are you expecting?

Mr Mandlowitz: Assuming that the royal commission undertakes a serious review of the substance of workers' compensation and social program delivery and is allowed to do that, I am looking for a 20- to 30-year blueprint for the delivery of social programs and disability management programs in Ontario. It is a huge and difficult job. It takes people who are brighter than I and have a stronger and more developed sense of vision. I would say to the government, you have an enormous task in finding the people who can come to the table and do that.

Mr Fletcher: Well, you know, Jason, we have taken some difficult steps and made some difficult decisions over the past. I think we'll be doing that again. Thank you.

The Vice-Chair: On behalf of this committee, I'd like to thank the Apparel Manufacturers-Marketing Association of Ontario for their presentation to this committee this morning.

1030

GREATER KINGSTON AREA INJURED WORKERS ASSOCIATION

The Vice-Chair: I call our next presenter, from the Greater Kingston Area Injured Workers Association. Good morning and welcome to the committee.

Ms Elizabeth Jones: Good morning, ladies and gentlemen of the panel. My name is Elizabeth Jones and I'm the secretary and case worker of the Greater Kingston Area Injured Workers Association.

I want to thank you for this opportunity to present our views on Bill 165. I also want to express to you our deepest concern and disappointment with the decision by this committee to hold committee hearings in only four cities in the province. To sincerely comprehend the true impact this legislation will have on injured workers, it would be plausible to hear from those directly affected. To deny access to communities such as Kenora, Hamilton, Thunder Bay and Timmins, areas that should be participating, is a disgrace.

Our tiny office was opened March 7, 1994, and it has been inundated with workers' compensation claimants. As our phone was being plugged in, it was ringing, and it is still a persistent jangle.

The official opening for the Greater Kingston Area Injured Workers Association was April 28, the provincial day of mourning for Ontario workers who have died while performing their job, 6,000 in this province, and the 300,000 workers in Ontario who have suffered work-related injury and disease. Employers say they hear the message of occupational health and safety, but implementing and adhering to sound occupational health and safety programs is too costly and interferes with profit margins and production costs.

Daily, we see in our office injured workers who have had their lives almost destroyed due to a work-related injury or disease. Members have lost their homes, social lives, credit ratings, had their privacy invaded and are in need of psychiatric as well as medical care to cope with their life as they now know it.

Although the Workers' Compensation Board's mission statement reads "adjudication and justice in a timely

manner," we have yet to see timely adjudication in our office. Claimants are placed in bureaucratic chaos, and time after time, when the claimant is reduced to complaining of their financial concerns, such as food, rent, mortgage, how to pay for prescriptions, they are told to apply for welfare. Welfare, in most instances, places the injured worker in the situation of having to take from the food allowance to maintain their mortgage or rent, leaving very little money for their utilities and sundry items. Entertainment is not a consideration.

In our small city of Kingston, we have five prison systems, federal and provincial. Inmates, levels 1 to 4, are paid \$5.57 a day. Inmates involved in a rehabilitation program are paid \$4 per day. Inmates involved in the system's work programs are paid minimum wage, and these inmates must pay a stipend for their lodging. This lodging includes all utilities and maintenance, three Canada Health Guide meals per day, recreation with the very best of equipment, entertainment that includes the latest films released, and most prison libraries have the books that are on the current best-seller list. Rehabilitation for an inmate is an option and courses of their choice are readily provided.

The injured workers' rehabilitation is based on their wage at the time of injury, and even though some claimants are given expensive physiological testing and may have an expertise that should be nurtured, if this expertise does not fall in the wage scale of pre-accident earnings, they are placed in a program "deemed" appropriate by the vocational rehab case worker handling the claim. Because of the internal fraud at the Workers' Compensation Board, injured workers are not provided with the much-needed tools that are required to excel at the courses provided.

Many injured workers, due to repetitive strain or traumatic injury, are diagnosed with a disease which is secondary to their compensable injury called fibromyalgia. I have included a news clipping from the Medical News, appendix A in my brief.

London injured workers have a regional office that appears to have an understanding of the disability known as fibromyalgia. Claimants in eastern Ontario dealing with the Ottawa regional office are not as fortunate. A fibromyalgia victim is considered only to have chronic pain and is paid a pittance under the board's chronic pain guidelines. This is very fiscally prudent for the board as the fibromyalgia victim is plagued for life with chronic muscle spasms, chronic insomnia, chronic migraine headaches, chest wall pain that feels like a heart attack, and irritable bowel and bladder problems. Yet fibromyalgia claimants are expected to get on with their lives as if they have not been affected at all and recover at the board's pace.

Fibromyalgia claimants have vocational rehabilitation closed and their benefits reduced to nil because they can't cope with the classroom regimen. If the board has not acknowledged the secondary component of fibromyalgia, VR closure is explained as "the claimant is uncooperative." Physio and massage therapy and chiropractic maintenance are denied to the injured worker who tries to maintain their employment. Physicians who suggest a

reduced work week for their patients with fibromyalgia are astounded to hear this is not negotiable with workers' compensation. If the claimant requires a reduction in hours to maintain their job, they must use up their holiday time or expend their short-term disability pension, if they are fortunate enough to have this alternative.

A program such as London's and the comprehension that supports and sponsors a program such as London's are not available in eastern Ontario. Committee members, this inconsistency should not be permitted to continue.

There are so many inequities within the workers' compensation system, one really does not know where to begin, from the "compensationese" a claimant must try and decipher, the long wait when a claim is sent to decision review services, to the eternity it takes to get a decision from the complex cases unit dealing with diseases. By far, I feel what is most upsetting is the handling of our older injured workers. Far too many are told they are too old to rehabilitate. They are placed in a job search club sponsored by the March of Dimes, usually for a very short period of time, instructed on making a résumé, given six months to find employment in this computer age and after six months, if they are unaware they can ask for an extension, they lose their rehabilitation supplement and are reduced to extremely small pensions. Seventy per cent of our senior injured workers are living below the poverty line.

Germany, Sweden and Australia are excellent examples of compensation systems that work. These systems are just and are not punitive to the victims of workplace injury and disease. Ladies and gentlemen of the committee, Canadians need and want to be treated with the same dignity and fairness. I thank you for your time.

The Vice-Chair: Thank you. Mr Johnson, about four minutes.

Mr David Johnson (Don Mills): Thanks very much for your deputation. You don't paint a very pretty picture of the workers' compensation system, but—

Ms Jones: It is not a very pretty picture.

Mr David Johnson: —I suspect you paint an accurate one of the system.

I was intrigued on the second page of your deputation when you indicated that, "Because of the internal fraud at the Workers' Compensation Board, injured workers are not provided with the much-needed tools that are required to excel at the courses provided."

There have been reports of various fraud within the workers' compensation system. I think one estimate is \$150 million a year in terms of fraud.

Ms Jones: Internal fraud.

Mr David Johnson: All right. I wonder if you would expand on what sort of fraud you're referring to and what should be done to come to grips with this.

Ms Jones: The board places people usually in a very quick computer program. Many of these claimants have been out of the school system and have been in the workplace for a very long time. They're put into a computer studies course because they feel that that's the quickest way for them to go. The claimant is also put in the position where they become extremely frustrated, and

there's a wonderful thing that happens at VR. They're made to feel very inadequate because they can't cope. They're never provided with computers in the Kingston area, but apparently in Toronto people were provided with computers because someone had an in with computers.

In our area, people aren't provided with a computer to work at at any great length. They're just told to look for time elsewhere. They're not even told that the board would help them with renting a computer for them. They're left with the frustration of trying to sort out a computer within a very small period of time, and usually they're people who have never been exposed to a computer.

Mr David Johnson: Let me go back to the first page of your deputation where you paint a picture of—well, you use the word “chaos” and indicate that “adjudication and justice in a timely manner,” and you have not seen that. “Claimants are placed in bureaucratic chaos.” Time after time they're refused etc. I think again on the last page you use the word “eternity” to get decisions on certain cases. Why is this? You're painting a picture of a system that is simply not working. It sounds like it's broken down. In your experience, what's the problem?

Ms Jones: The problems are so many. One of the major problems I feel is that many adjudicators don't know diddly-squat about an industrial setting. They hear of a bobbin in an industrial setting, such as Dupont or Celanese, as being a bobbin that you put on a sewing machine. Little do they realize that it's 35 pounds. They wouldn't have any idea what a capstan is, and they have no idea that it might be six feet around. They have no idea that it runs at 780 revs per minute, and then it becomes just: “Well, I read your job description and you were picking up 15 of these”—in their mind little, tiny—“sewing machine bobbins every three minutes. What is the big problem with that?”

1040

Constantly you talk to them about kinesiology studies, ergonomic studies. Well, by the time you can get them to an ergonomic study or a kinesiology study, the claimant has waited five to six months because somebody has checked with their manager or checked with their regional medical adviser, and the claimant might have all kinds of medical information sent in from specialists, which Kingston is quite noted for their excellent medical specialty, and well, they have to get back to the medical adviser, who is usually a GP.

Mr Karl Crevar: Could I just expand on that a little bit? My name is Karl Crevar. I'm with the Ontario Network of Injured Workers Groups.

In terms of the other problem, we find it somewhat disturbing that in a society such as ours, in a free society, injured workers have to prove their innocence. They're judged guilty. They have to prove their innocence.

Let me just go back, Mr Johnson, to your question about the fraud. I think it's quite interesting that the previous speaker had noted and gave direction that maybe what we should be looking at is giving amnesty to employers who are not paying into the system who

should be. Why are injured workers being attacked to have benefits lowered when we can clearly see where some of the revenue problems are that must be addressed?

Mr Gary Wilson (Kingston and The Islands): Welcome to Ottawa. I'd just like to—

Ms Jones: I got very lost, Gary.

Mr Gary Wilson: That's too bad. It's not as well laid out as Kingston in ways and—

Ms Jones: We're very spoiled.

Mr Gary Wilson: Yes. I wanted just to clarify your reference to the inmates. Are you saying that inmates are treated better than injured workers? Is that the point you're trying to make?

Ms Jones: I'm not trying to be punitive with inmates at all. I'm just drawing a parallel for you to go by. Someone can be rehabilitated at their leisure and have three meals provided for them a day, and excellent meals provided for them. They don't have to worry about their lodging, they don't have to worry about their heat, they don't have to worry about their taxes. They don't have to worry about anything really, other than rehabilitation.

An injured worker is usually put in the frustrated position of having to wait a tremendous amount of time for their claim to be processed and the financial impact of that is overwhelming. Certainly they don't have three Canada Health Guide meals a day when they're doing this.

Mr Gary Wilson: As I say, I just wanted to clarify that to make it specific because it occurred to me while you were going through your presentation that it's taken—well, some would still obviously criticize conditions in Canadian prisons today, but there's been a long-standing movement to improve conditions in prisons, just as I think for injured workers your office opening in Kingston represents an important step towards improving rights and conditions for injured workers. So I want to commend you for the steps you've taken so far. I've heard from my office that you are taking a lot of the work that used to come to our office. So it's very helpful to have you there, somebody who's expert on the conditions.

I wanted, because we haven't got much time here, to ask you about returning workers to the job and what you think of the return-to-work committees, the benefits that can come to that from both employers and workers. Do you think that's something that could be worked on, that Bill 165 helps address that issue?

Ms Jones: The Human Rights Code quite clearly addresses that and basically, bottom line, it narrows it right down and says, “If you wreck these people, you have to maintain their employment.” So why are we dancing around that mulberry bush? But employers very often go: “Well, we're downsizing. We'll get rid of our injured workers first.”

I have a client who has had 29 years with a company. Twenty-nine years and she's told, “Well, your restrictions are too high,” even though she was working the day they told her this. “Your restrictions are too high. You're out the door.” Twenty-nine years. She hasn't gotten her

severance pay yet. She has to go to the judicial system to get that. Do you think that that's at all fair? She's not quite 55. They could have kept her in place until age 55 and possibly considered early retirement; instead, to put her in the chaos that she's in is totally unfair. Twenty-nine years' service.

Mr Gary Wilson: And you'd say this isn't entirely unrepresentative, that there are other cases like this?

Ms Jones: Oh, this is just one of so many, it's overwhelming.

Mr Offer: Thank you very much, Ms Jones, and thank you very much for your presentation. I think it goes without saying, but I'd like to confirm that based on your concerns about the legislation, you are opposed to the particular bill before the committee?

Ms Jones: I'm opposed to it? I am not opposed to it. We have to keep Bill 165 in motion, to get it ironed out, to get it straightened out, because injured workers are being poorly represented with the bill that's already in.

Mr Offer: If the government does not propose any amendments to deal with the concerns which you have brought forward, would you be in favour of its passage or not? Are you in favour of the passage of the bill as it is currently before this committee?

Ms Jones: As it stands at this time?

Mr Offer: Yes.

Ms Jones: I will let Karl speak for me because—

Mr Crevar: I think your question—I mean, why are we going through this process? I think we've indicated very clearly at the outset, the way the bill was introduced—we're in this process to try and get something, to try and rectify a situation. We have some problems. It's no secret. We do have some problems with the bill and hopefully, through this process, we can get some of those problems resolved and pushed forward on some of the other initiatives which we think are positive.

Mr Offer: I understand that full well, Mr Crevar. The question that I have is important for me because you have very clearly put forward your concerns. In the event that the government does not address the concerns as put forward in your particular presentation, if the bill, after these hearings, is put before the Legislature in basically the same form as it appears now, are you or are you not in favour of its passage?

Mr Crevar: Let me just say again very clearly, we're into this process; how can I turn around and say to you, because I cannot anticipate what this committee is going to do in terms of recommendations? We don't know. If and when at that time the position is the same, we'll have to take a look at it.

Mr Offer: Thank you for that response. There are four purposes to the bill, all of which are referable to injured workers. The governance of the bill creates a board of directors composed of a great many individuals, none of whom represent primarily injured workers. Would you be in favour of an amendment to the legislation which statutorily gives to injured workers in this province a seat at the board of directors of the Workers' Compensation Act?

Ms Jones: That injured workers haven't been represented on the board is a travesty. They have to have a seat on that board. The board has to hear consistently from injured workers.

Mr Offer: Thank you. As you may or may not know, our party conducted an outreach, not only throughout the province but indeed spoke to different provinces in the country, and one of the things that was found from the participants is that the most inexperienced person at the board is rendering the most important decisions ie, the adjudicators. I would like to get your thoughts on that position or conclusion that was reached as a result of my party's outreach.

Ms Jones: Mr Offer, I'm from industry. The board's lines of progression are: You go into the workers' compensation system at entry level, which I believe is an access specialist, which means a photocopying clerk, or you can go in as a junior file clerk and then from photocopying files or being a file clerk, you can become an adjudicator. You can become an adjudicator at age 22 when you don't know diddly-squat about industry; you don't have any idea what goes on in an actual workplace.

Mr Offer: Thank you very much.

1050

Mr Crevar: If I may, Mr Offer, just to expand, I guess the answer to your question, the people who are making decisions should be fully trained to make those types of decisions. When you're sitting there talking about making a decision that will affect an individual for the rest of their life, they should know what the heck they're talking about and what they're supposed to be doing.

I just want to comment quickly on Mr Wilson's question before. We've been talking about the unfunded liability and how to cut benefits in order to bring that down. I think if we expand and invest in the long term on prevention—I have not seen the cost figures on a long-term basis, but on a short-term basis it saves the system a hell of a lot of money. So if we look at expanding the long-term forecast to accident prevention, the costs will be drastically reduced by the year 2014. There are only two key issues: the re-employment provisions and compensation benefits—and prevention.

The Vice-Chair: On behalf of this committee, I'd like to thank the Greater Kingston Area Injured Workers Association for the presentation to the committee this morning.

PUBLIC SERVICE ALLIANCE OF CANADA
ALLIANCE DE LA FONCTION PUBLIQUE DU CANADA

The Vice-Chair: I call our next presenters, from the Public Service Alliance of Canada. Good morning and welcome to the committee. Once again a reminder, you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you would leave a little time for questions and comments from each of the caucuses. Please identify yourself and then proceed.

Ms Joane Huruns: Good morning. I'd like to make my presentation in French.

Au nom des 73 000 membres de l'Alliance de la fonction publique du Canada qui travaillent en Ontario,

j'aimerais remercier votre comité de nous avoir permis de nous présenter devant vous ce matin. Si le comité le permet, je prendrai quelques minutes pour présenter le contenu du mémoire de l'Alliance qui vous est remis. Par la suite, nous serons bien sûr disposés à répondre à vos questions.

Les membres de l'AFPC qui travaillent en Ontario le font soit pour le compte du gouvernement fédéral ou dans des établissements provinciaux, tels que les secteurs hospitalier, de la recherche et de la sécurité. La majorité des personnes à l'emploi du gouvernement fédéral à travers le Canada sont protégées par la Loi d'indemnisation des agents de l'État. Cette Loi offre une indemnisation pour toute lésion professionnelle au même taux et aux mêmes conditions que celles prévues à la législation de la province où la travailleuse ou le travailleur est employé.

En 1993, 10 000 réclamations ont été soumises pas des travailleurs et travailleuses de la fonction publique fédérale en Ontario seulement, dont quatre pour accident mortel. Ces réclamations représentaient un total de 44,16 millions de dollars en coûts pour l'employeur, soit le coût direct des indemnités, le remplacement du revenu pour accidents du travail, les frais d'administration et les frais médicaux.

Comme vous pouvez le constater, les membres de l'Alliance qui travaillent en Ontario et qui ont le malheur d'être victimes d'une lésion professionnelle seront affectés par les dispositions du projet de loi 165, et c'est la raison pour laquelle nous sommes ici aujourd'hui.

Au départ, l'Alliance endosse certains des amendements proposés dans le projet de loi 165. Par contre, d'autres amendements se situent bien en deçà de l'intention première décrite dans le rapport Meredith de 1915 au parlement ontarien. En plus, le projet de loi oublie certains points importants, comme la reconnaissance de toutes les maladies professionnelles et la simplification légale du système de révision.

Compte tenu du peu de temps à notre disposition, nous avons distribué le mémoire avec les amendements proposés et nos commentaires préciseront certaines de nos inquiétudes.

Toutes les personnes membres du comité sont conscientes que le projet de loi 165 concerne le bien-être financier et émotif de centaines de milliers de personnes qui ont le malheur d'être blessées au travail. Aucune solution ne sera complète sans qu'on prenne de véritables mesures visant à prévenir les accidents du travail si la prévention échoue. Elles coûtent moins cher en ressources humaines et en capital, en argent, bien sûr. Il faudra compter donc sur une indemnisation adéquate et un programme sûr de réadaptation.

Il va sans dire que les principaux objectifs des victimes d'accidents et de leur famille concernent le niveau de revenu pendant la période d'invalidité, le protocole de retour au travail et les programmes de réadaptation professionnelle.

Les employeurs ont assez bien réussi à réduire les prestations dans les autres provinces. Le gouvernement de l'Ontario ne doit pas se plier à des pressions similaires de

la part des employeurs. Ces derniers nous font croire que le système actuel d'indemnisation des accidents du travail doit être revu en mettant en péril les prestations versées aux personnes accidentées. Les groupes d'employeurs ne veulent pas que ce comité étudie le véritable problème, à savoir le manque d'intérêt des employeurs pour la prévention et les programmes de retour au travail.

La pauvreté est toujours assez répandue dans la communauté des personnes victimes d'accidents du travail et de maladies professionnelles. Ces personnes sont doublement victimes lorsqu'elles voient la Commission des accidents du travail réduire leurs prestations en estimant ce qu'aurait été le revenu de la travailleuse ou du travailleur. Le taux de chômage pour les personnes invalides dépasse toujours les 40 %.

Néanmoins, certains groupes patronaux voudraient nous laisser croire que les problèmes financiers de la CAT sont dus à des prestations beaucoup trop généreuses et à des demandes abusives pour des lésions professionnelles douteuses. À notre avis, si la CAT a des problèmes financiers aujourd'hui, c'est en raison du sous-financement des employeurs et de l'échec de la prévention.

L'amendement proposé qui vise à augmenter la rente des travailleurs et travailleuses victimes d'invalidité permanente est un pas dans la bonne direction. De manière ironique, cet amendement proposé est accompagné d'une formule d'indexation au coût de la vie totalement inacceptable. Si elle est adoptée, cette formule pourrait exposer certaines personnes accidentées à des taux d'inflation élevés et les priver d'une augmentation de leur rente qui ne peut, au contraire des salaires, être rehaussée autrement. D'autres mesures seront nécessaires pour corriger certaines injustices, incluses antérieurement dans le système d'indemnisation, adoptées dans le cadre de projets de loi auxquels les syndicats se sont catégoriquement opposés, par exemple le projet de loi 162.

La réalité statistique alarmante demande que le gouvernement réagisse de manière tout à fait non partisane pour corriger à la fois la situation en ce qui a trait aux accidents du travail et aux maladies professionnelles, ainsi que la situation déplorable et déhumanisante qu'est le lot des personnes accidentées. Cette vision est gravée à tout jamais dans l'esprit de toutes les personnes qui doivent aider les travailleuses et les travailleurs accidentés dans ce qui semble être une quête interminable de justice.

Nous n'appuyons pas l'article 56, étant donné que cet amendement ne constitue pas un conseil d'administration bipartite, c'est-à-dire patronal-syndical. Nous nous opposons à la participation de deux membres représentant l'intérêt public. Tous les membres devraient être choisis parmi les partenaires en cause, encore une fois syndicat et patronat, qui devraient mieux comprendre les accidents et les maladies reliés au travail.

De plus, nous ne croyons pas que le conseil d'administration devrait prendre des décisions fondées strictement sur ses propres considérations d'ordre financier. L'usage abusif de cette disposition pourrait entraîner des problèmes financiers plus graves pour un groupe de personnes accidentées déjà maltraitées.

Quand les parties ont accepté le compromis historique, le principe Meredith qui a donné lieu à la Commission

des accidents du travail, elles n'ont jamais voulu que les considérations financières soient le principal enjeu ou sujet de préoccupation des administrateurs de la Commission alors que les employeurs font peu de choses pour prévenir les accidents et réintégrer les travailleuses et les travailleurs accidentés. Leur responsabilité demeure pleine et entière.

1100

L'amendement proposé au paragraphe 51(2) semble proposer un plus grand accès à l'information médicale. Les renseignements diagnostiques ne devraient jamais être exigés si nous voulons protéger le droit à la vie privée du travailleur et de la travailleuse. Son médecin devrait pouvoir refuser de divulguer les renseignements non diagnostiques s'il y a un problème. Nous avons besoin de garanties pour assurer que les renseignements, s'ils sont fournis par le médecin, serviront au rétablissement de la travailleuse ou du travailleur blessé et qu'ils seront conformes au programme de retour au travail de l'employeur.

La CAT doit reconnaître, élaborer, approuver et contrôler un tel programme. Cet amendement ne doit pas être une occasion facile pour les représentants patronaux qui cherchent constamment un moyen possible pour contester une demande de réparation, qu'elle soit légitime ou non. Le droit à la vie privée d'une personne est un droit sacré, surtout quand il s'agit de renseignements médicaux. On parle toujours de réinsertion ici.

Le projet de loi 165 ne fait rien pour redresser des frustrations de longue date liées au refus de la Commission des accidents du travail de reconnaître certaines demandes, surtout pour des maladies professionnelles. La maladie professionnelle est le principal domaine où le fardeau de la preuve incombe injustement au travailleur ou à la travailleuse. Nombre de travailleurs éprouvent des problèmes de santé graves de plus en plus reconnus par des spécialistes de la médecine. Des affections comme la «polysensibilité chimique» et le «syndrome des édifices hermétiques» ne sont pas encore comprises ni reconnues ou sont simplement ignorées par toutes les disciplines médicales. Bon nombre de ces cas sont encore pris dans l'enchevêtrement juridique de la Commission pendant que des travailleuses et des travailleurs malades perdent leurs économies, leur maison, leur famille, leur emploi et leur santé mentale. Elles sont présentement des otages du débat médical.

Les membres du comité devraient noter que l'Alliance n'a pas de but intéressé en proposant la réintégration au travail ou la réembauche. À la suite d'amendements législatifs ou de conventions collectives négociées entre l'Alliance et les employeurs fédéraux, la grande majorité de nos membres ont des droits de réintégration et de réembauche. C'est très récent toutefois. Les personnes à l'emploi d'établissements fédéraux ont récemment obtenu une protection légale en matière de réembauche dans les amendements à la Loi sur l'emploi dans la fonction publique et à ses règlements, ainsi qu'à la partie III du Code canadien du travail.

Pour les membres qui relèvent de la juridiction ontarienne, les droits de réintégration et de réembauche sont prévus dans la Loi sur les accidents du travail de l'Onta-

rio, et notre mémoire a déjà souligné nos préoccupations.

La création d'une commission royale nous réjouit, mais l'Alliance croit que ce comité pourrait sans attendre régler d'autres questions grâce à des amendements supplémentaires.

Nous vous remercions de l'intérêt porté à nos revendications et nous vous prions d'éliminer toutes les injustices à l'égard des victimes d'accidents du travail et de maladies professionnelles et de respecter ainsi le pacte social de 1915. Merci.

Je vais indiquer que mon nom est M^{me} Joane Huruns. M^{me} Louise Hall, qui est notre chef en santé et sécurité, pourrait répondre aux questions, ainsi que M. Denis St-Jean, qui est un de nos agents en santé et sécurité, si les questions devenaient trop techniques pour une politicienne.

Ms Sharon Murdock (Sudbury): Thank you very much. Actually I was reading ahead as you were speaking. I'm looking at number 22, and it is in relation to your comments regarding agreement with the Industrial Disease Standards Panel.

Ms Huruns: With what?

Ms Murdock: The Industrial Disease Standards Panel. Also 22, where the alliance is calling for regard to occupational diseases and many of the workers are experiencing serious health problems which increasingly are being recognized by specialized members of the community.

When you say that delays of 18 to 24 months are common for such cases and affected workers must not be held hostage to the medical debate, where some of the diseases—and I'll use my riding because it took 40 years for gold dust lung disease to be accepted, and it's only in 1992 that we finally added asbestosis to the schedule 4 list. If there are no real data, what do you suggest—that you pay the worker while the debate is going on?

Ms Huruns: What is happening—and Louise will be able to complete—is that we are collecting, particularly in the union movement, more and more data on the specific industrial disease that we are referring to, particularly—what is it in English?—multiple chemical sensitivity, although the medical community has a problem accepting it and it's merely lack of knowledge and not because the data are not there.

We are ready to admit it's kind of a new issue. It's an old problem, but now because of the new buildings that we're living in and probably pollution problems, we can see the multiplication of problems related to sensitivity to different products. We're working in this direction with doctors who have a strong—I would say—social conscience in this regard and that diseases are not due strictly to the imagination of the workers.

Ms Murdock: Do you have return-to-work program committees in your workplace or anything like that, re-employment committees?

Ms Huruns: What we have is, we have health and safety committees that are being regulated by the Canada Labour Code.

Ms Murdock: So they are health and safety committees for health and safety in the work site?

Ms Huruns: Yes.

Ms Murdock: But I'm thinking more—you don't have committees, say, when someone gets injured, that you could look at a job site, see how it could be accommodated?

Ms Huruns: No. If I may add, just up until recently very often the union had to defend a worker who had been injured going back to work, not being able to perform the work and being dismissed for incapacity and it was a real tragedy. So with the new legislation we think that it's going to be corrected.

Ms Murdock: So you support—

Ms Huruns: Yes.

Ms Murdock: Particularly the provisions on return to work?

Ms Huruns: Yes.

Mr Offer: Thank you very much for your presentation. I see on page 2 that there are 73,000 members of the PSAC employed in the province of Ontario. I guess I have basically two small questions. I note on page 8 where you say that you are in complete disagreement with section 148, which would be the Friedland formula.

Ms Huruns: On page 8?

Mr Offer: Page 8, number 17, that you're in complete disagreement with the formula as established in section 148.

Ms Huruns: Okay.

Mr Offer: On the basis of your representation of 73,000 members, and your complete disagreement with section 148, if the government proceeds with this particular piece of legislation in its current form, is the alliance in favour of the legislation, of its passage?

Ms Huruns: I'll let Mr St-Jean respond to your second question, particularly for indexation. If the legislation is passed, then of course we'll love the legislation and try to do the best with it. That provision, in my view, is reducing the capacity of the worker to maintain his living standards and why this worker should pay for—

Mr Offer: I understand—

Ms Huruns: You understand this?

Mr Offer: I understand that. I'm just trying to glean from the presentation the fact that you're in complete disagreement with section 148 and what the Public Service Alliance's position would be if the government proceeds with the legislation which contains 148.

Ms Huruns: Oh, I see. Obviously it would be full indexation, like for the pension, for example.

1110

Mr Offer: Okay. My last question deals with the representation on the board, the governance. We have heard in the past through our hearings that whether injured workers are part of a union or not is not the issue, but that they strongly feel that they have a particular interest, a community of interest almost, where they should have legislative statutory standing as being part of that board.

I'm wondering, based on the fact that the four subsec-

tions of the purpose clause are all referable to the injured worker, would the alliance be in favour of giving to injured workers in this province statutory recognition on the board?

Ms Huruns: I'll try to be short on this one. Through their unions, in my view, the injured workers should have a representative, and if other members of the public, as a whole, want to have a say, in my view, they should have a consultative role, but in the decision-making, when a major decision needs to be made, I think the two parties, the union and the employers, should work that out together.

One of the dangers, and let's call a spade a spade here, is that with the composition of the board, the voice of those who are the first affected, the injured workers, will be flooded in an overrepresentation of two individuals being chosen in the public.

Mr David Johnson: Perhaps to get to the previous question, maybe to put it more simply, if we were voting on this bill, the way it is here today, and you were sitting over here, would you vote for this bill, yes or no?

Ms Huruns: I would propose amendments.

Mr David Johnson: And if those amendments were voted down, then what would you do?

Mr Carr: You only get a yes or no vote.

Mr David Johnson: That's all we get.

Mr Carr: You can't say "maybe."

Ms Huruns: I really don't like that question, to tell you the truth.

Mr David Johnson: Yes. I don't like it sometimes either, but that's the way it is.

Ms Huruns: I'm not trying to be facetious here. I think it's the role, particularly from an NDP government, to—I don't want to get into the politics, but I—

Mr David Johnson: All right. I think you've answered the question.

Ms Huruns: No, no.

Mr David Johnson: Mr Chairman, I think we've got her answer on that.

Ms Huruns: No, listen. I talked earlier about a pact which is very important. I have not listened to the presentation of the former people here from the manufacturers. There was a pact agreed in 1915, and if we continue to see the erosion of the protection of that pact, one day the union will say: "That's enough. We're going to sue you and it will cost you a bundle of money." That's going to be very, very good for the economy of this province.

Mr David Johnson: Okay. That's a clear answer.

What I really wanted to ask, though, you've indicated that the primary problem with the system is the underfunding in terms of the employers. But I have to put it to you that we listened yesterday, for example, to the owner and director of Seamless Cylinder International. She represents 45 employees; you represent 170,000, but there are many, many more people in her situation than there are in yours—there aren't many unions of the size of yours—and where the jobs are going to come is more in

her field. The small businesses in Ontario are going to create the jobs in the future.

The problem they have is, they not only have to compete here in Canada, but they have to compete on an international basis, and at \$3 per \$100, the workers' compensation here in Ontario is the highest. To put that up even more from the point of view of small business is going to be a disaster. We even heard here today that if it wasn't for the unfunded liability, it would be \$2.30 per \$100. New Brunswick today is putting its assessments down to try to be competitive, to try to allow businesses an opportunity to grow and create jobs, and that's good for all of us. I wonder if you've taken that into account when you think that the assessment rate should go up.

Ms Huruns: Obviously, even though we are a public service union, we are very interested in the wealth of the private sector to create jobs in the private sector. There's no doubt about it, just in the case of revenue for the federal government and the provincial government.

The high cost of compensation at the moment, and I think it's similar everywhere, in our view, is mainly caused by the lack of prevention. Prevention is the key. We should invest more in prevention. It would cost less, as I said earlier, but also in a lot of systems in the other provinces we see an overlegalized process, and I think the two parties, as well as the unions, we should see a process where they sit down and they really look at what you're doing now and they really look at simplifying and reducing the cost. The only people now who really gain from it are the lawyers and not the victims and not the employers.

Face to face, I think there are ways to cut down these costs. The first one is prevention and the other one is to cut down on the overlegalized system.

The Vice-Chair: On behalf of this committee, I'd like to thank the Public Service Alliance of Canada for bringing us their presentation this morning.

OTTAWA NEW CAR DEALERS ASSOCIATION

The Vice-Chair: I'd like to call forward our next presenters, from the Ottawa New Car Dealers Association.

I'd like to apologize now for not announcing it, but there are interpretation devices on either side of the room that are available to anybody sitting here and following the proceedings of the committee.

Mr Jean-Yves Laberge: For the sake of time, for those following our presentation we will be skipping a few paragraphs only.

From Campbell Ford, Mr Gord Hoddinott is the president; Irene Thomson is from Citiwest; Mr Alan Hollingsworth is from Bytek Automobiles; I am from Turpin Pontiac-Buick; and Mr Don Mann is the executive director of the Ottawa New Car Dealers Association.

Mr Chairman, members of the standing committee, ladies, gentlemen, good morning.

Monsieur le Président, membres du comité, mesdames, messieurs, bonjour. Nous vous remercions de nous avoir donné l'opportunité de vous présenter nos observations sur des amendements proposés.

We wish to express our sincere gratitude for the opportunity given our group to bring forth a series of observations which will shed some light on the detrimental effect the proposed amendments would have, should they be permitted to be integrated into the present WCB act with the passing of Bill 165. We will also allow ourselves to provide you with a few recommendations.

Prior to engaging in our observations, however, we would like to better inform you as to who we are and whom we represent.

We represent the Ottawa New Car Dealers Association and this association comprises 56 franchised dealers representing both domestic and import products, situated in the regional municipality of Ottawa-Carleton. The 56 franchised dealers presently employ 2,753 employees and generate a sales volume of approximately \$1.9 billion in this region, a very important contributing factor to the overall economy of this area.

Not to burden you with unnecessary statistics, but to give you a very good understanding, the overall annual projected payroll for the 56 dealerships for this year 1994 is forecasted at \$92.7 million, again a very significant injection of capital disbursed in our area of responsibility, helping this community to progress.

Our dealer group, in addition to having its own association, is supported by the Ontario Automobile Dealers Association, better known under the acronym of OADA, which has a membership of over 1,000 franchised dealerships which employ approximately 55,000 employees. Through our associations, we pride ourselves with having a solid reputation for participation, cooperation and, at times, providing a leadership role in working with the Ontario provincial government, regardless of political colours.

A few examples:

—The creation of our own college, funded in part by manufacturers, dealers, fund-raising events etc. Georgian College today is well recognized and offers a full three-year college education geared to our very specific needs. After only nine years of operation, 540 students are actively working in our dealerships.

—More recently, our own contribution to the workplace, the workplace hazardous materials information system, known as WHMIS.

—The pay equity program, developed in part through Georgian College.

—Lastly, currently under the new legislation, employment equity, also with the assistance of Georgian College.

As you can see, we take all these issues very seriously as they impact the community we work and live in. It is important for us to participate and contribute to the overall development of our industry and address everything that may affect it.

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In the past years, we have worked very hard to create a safer and healthier work environment. In tandem with our association, meetings were held, training seminars were offered and a series of independent groups, such as the St John Ambulance, were recruited to help us create and foster an awareness towards good health and a safer

work environment. To us, this makes very good sense. After all, the success of our own businesses is predicated upon the quality of our workforce, white- or blue-collar alike. Our greatest investment is in our manpower, as it represents our greatest asset.

This brings us to the specific reason for being here today.

The 1992 headlines from the Ottawa Business News, Mr Mike Kronick: "Workers' Compensation Board: Out of Control?"

"In spite of a 92% increase in assessment rates over the past 12 years, the board had an unfunded liability of \$10.3 billion at the end of 1991.

"Ontario already has the highest compensation cost per worker of any Canadian province."

Given this article, supported by many others, you can understand why we are extremely concerned with the most recent turn of events, particularly with the total collapse of the Ontario Premier's personally appointed PLMAC, the Premier's Labour-Management Advisory Committee. The obvious undertone here is that the present government, starting from Premier Rae, fully recognizes the perilous situation the WCB currently faces and, more importantly, the seriousness of its future indebtedness and its unfunded liability of \$31 billion forecasted by the year 2014. All this when not too long ago, after some radical increases in premiums, we were to resolve the unfunded liability by the year 2004.

Our own industry leader, Mr George Peapples, who until the summer of 1994 was president of General Motors of Canada, wrote the following upon the collapse of PLMAC:

"For the past two years, at the request of the Premier, we have invested thousands of hours to develop constructive proposals for reform of the system. Hundreds of business representatives have been involved in analysing the present precarious financial situation of the system, doing root-cause analysis of the problems and developing alternatives to ensure the future viability of the system. After intensive weekend meetings with the labour representatives in early March 1994, we reached a framework agreement on the fundamental reforms necessary to basically eliminate the ballooning unfunded liability over the next 20 years."

We, as small business operators, welcomed this breakthrough that would permit the resolve of this financial chaos and, at the same time, the removal of threats of further increases in costs.

It should therefore come as no surprise to all why we rejoiced at the prospect of seeing a solution to this significant problem. In fact, during the period of 1983 to 1988, we have faced serious premium increases to supposedly bring the deficit at the time under control by the year 2004. For three years in a row, 1983, 1984 and 1985, in addition to the normal increase, we saw a 15% surcharge applied to our yearly premium, followed by another three years, 1986 to 1988, where the surcharge was levelled off at 10%.

Reluctantly, at the time we had agreed, for it carried the promise of resolve, and this action, coupled with a

great emphasis on educating, training our employees to reduce our accident frequency, would produce the desired results; that is, a self-sufficient fund that would completely assure the financial protection for those employees who would find the need to access the fund for medical and/or vocational retraining purposes.

As business people, this was extremely important to us. If you remember earlier what we said in this presentation: Our greatest investment is in our people, for they represent our greatest asset.

Ms Irene Thomson: With much concentrated effort, energy and training, we've been successful at curbing the level of work-related accidents and health-related problems. As our claim experience improved, we did not see a reduction in our premium assessments; on the contrary, they've continued to escalate.

While the number of claims submitted clearly indicate a major improvement, we are now faced with a substantial increase in the amount of benefits being awarded, to the point where our efforts are negated by the largess in the awards.

Far be it from us to want to deny benefits that are due to our employees; however, one must understand clearly that fraud is not acceptable under any circumstances, and to further view this program as a guaranteed retirement plan is entirely wrong. We will work hand in hand with the WCB to protect the integrity of the fund for those who are clearly eligible for benefits.

Obviously we are seriously concerned with the new direction the WCB and this government intend to take, particularly in view of the findings of PLMAC.

Remember 1983-1988. We made the sacrifice, we bit the bullet in exchange for the resolve. Where are we today? Facing a greater financial dilemma than we faced at that time.

Like Ontario Hydro, the WCB is supposed to be free of political interference.

Premier Bob Rae had the right idea. He recognized the gravity of the problem, so he decided: Let labour and management resolve this once and for all. Their mandate was to offer recommendations that would correct the problem.

What happened? We have the right to know. After all, if the government is ready to impose upon us measures that will not solve the problem but increase our liability, we want to know why and certainly why the promise was broken. What happened to the willpower to bring this under control?

If you are an employer, and we are, the proposed measures are irresponsible. If you are an employee, and some of us are, you have the right to be concerned, because what happens when the well runs dry?

We are concerned that a further erosion of this fund may in the future require the government to ask participation from our employees to share in the cost.

Realizing the difficult economic climate this province has recently known and the very slow recovery that ensued, we the business community are extremely worried about the financial health of the WCB.

We have the right to ask why not one of the recommendations put forth by the management side was accepted, and why, instead of exercising financial prudence, the government unilaterally decided to increase benefits, completely forget the unfunded liability and appoint a bipartite board which will have no apparent power since the Minister of Labour will now take direct control and responsibility for the next 12 months.

It was certainly our clear understanding that the rule for no political interference applied.

In this day and age where the public demands better fiscal controls from all levels of government, municipal, provincial and federal, we are at a loss to understand the sudden change in direction. Where did the Premier receive his mandate and power to toss aside all the sound advice and choose to augment benefits, thereby increasing the deficit?

If the government were to pass legislation, we would comply. But this is not the case. These changes are being railroaded into place without the proper enactment.

Labour and management had an agreement. Remember the accord, March 9, 1994.

In essence the accord called for the creation of a functional bipartite board of directors, the establishment of a financial responsibility framework, the de-indexation of pensions according to the Friedland formula, and the development of a template of best practices for return to employment.

Today the unfunded liability of the WCB now stands at \$11.5 billion. In 1993, the Workers' Compensation Board posted a loss in excess of \$500 million. Also of extreme importance is that the WCB for the first time experienced a negative cash flow of \$74 million last year, which means the unfunded liability went up, and more importantly, the board had to dip into its assets to meet the cash requirements.

We as business partners have just gone through four very difficult years where sales have tumbled, profits have been squeezed to a dangerous level, with many experiencing loss positions. Our workforce has been reduced by sheer necessity in the face of a very sluggish economy.

Nevertheless, we have found the strength and resources to re-energize, recapitalize in some instances and certainly rebuild our businesses. We have learned to do more with less. We have also adapted to the need to retrain and refocus our business to face the challenges of the year 2000.

Mr Gordon Hoddinott: More than ever before, we invest in retraining and retooling to assure ourselves and our employees of continued employment.

In partnership with our manufacturers, our associations and, yes, our employees, we've learned to better control our expenses and seek new opportunities.

It must be clearly understood, however, that all this did not happen without some very painful decisions: Reducing our head count was necessary, limiting salary increases to the minimum, acknowledging that we needed to change in order to improve both efficiency and productivity.

This could not have been achieved without the full

support of our employees, who understood and accepted the reality of the situation. They have agreed, just as we have, to accept these sacrifices today for a guarantee in the future.

How can we explain to them, may we ask you, why the government has made a unilateral decision, in spite of financial chaos, to add an additional \$200 a month for older workers for life? This excess in largess will add immediately another \$1.5 billion to the unfunded liability from day one and is projected to cost \$86 million in cash each year thereafter.

We fully recognize that this additional benefit cost would not impact our employees directly; however, since the government has no money, we presume it will turn to us again for additional revenue in the form of increased premiums.

Even the government understands very well, we're sure, that companies, and in particular small businesses like ours, need to generate a profit, and a reasonable one at that, if we're to stay competitive in a marketplace like this. Staying competitive means many things: It means investment in retraining, investment in retooling, investment in new technologies and investment in new and modern facilities. Without sound profitability, our ability to create continuous employment is placed in serious jeopardy.

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We're not saying that the proposed changes alone will be cause for lack of profitability; no, what we're saying is that the increase in taxes levied by all levels of government is bringing a serious threat to our small business operations. If there is a government that should understand the rationale for financial responsibility, it should be yours, which has undergone a tremendously difficult financial period.

Permit us to cite a few lines from the bulletin of William M. Mercer Ltd, consultants in employee benefits. This bulletin is dated April 1994, and I quote: "A successful workers' compensation program must work as a fair benefit system and also be economically viable."

They continue by saying: "In Ontario, the enormous unfunded liability, \$11.5 billion currently and projected to \$31 billion by 2014, is a cause for concern. Curiously, some specialists on public section debt have suggested the unfunded liability is just a big number and that, as long as revenues provide enough cash flow each year to meet the cash benefits disbursements, the situation is not critical."

However, we know from the WCB's own report that last year it had sustained a negative cash flow of \$74 million.

The bulletin further says: "Pay-as-you-go can be defended if the cost is paid by the government with the power to raise taxes, but workers' compensation is entirely paid for by the employers. In Ontario, there are only enough assets to cover payments for two and a half years of cases currently in payment; by 2014, assets will cover only one year's payments. Payments for past claims are being borrowed from future assessments—a significant claim on future employees."

If, as employers, we're expected to fund 100% of the Workers' Compensation Board, should we not at least have an opportunity to have a say; and, given the current situation, which is well understood by all parties, should we not use good judgement and sound business practice to put our house in order first before arbitrarily deciding to expand it?

The province of Ontario has the dubious honour of presently having the worst track record of all provinces in Canada in terms of average premium paid per \$100 of payroll, benefits paid and lost time per claim.

Under the new modified work program, in case of illness and/or accident, the employer must have in place a modified work policy. Translated, this means that at the exact moment an employee notifies his or her employer of the nature of his work-related illness or accident, we must provide the employee with an alternative work proposal which the employer will submit to the proper medical authority, and hopefully, with the doctor's permission, the employee will return to work within hours or days to this alternative work offering.

The wages, as recommended by WCB representatives, must be determined by the employee pre-accident illness earnings, and the duration of this temporary placement is not to exceed six months. Earlier in our presentation we stressed the importance of protecting our workforce, since it represented our most valuable asset. We fully agree with and support a retraining program that would protect this valuable investment and at the same time the dignity of the employee. However, the point we wish to stress here is that as an employer we must pay the premium and are fully encouraged now not to process a claim—inform, yes, but not process a claim—instead, pay the employee to do filing, review work-related material and pay him or her their ongoing wages. This is how broke the program is.

I'll continue on the next page. There exist too many innuendoes, too many areas in the proposed changes that leave us at risk. We also face severe threats of penalty in the form of audit, surcharge and precise guideline for reward for a healthy and safe track record.

Again, to the next page. As small business entities, we are accustomed to evaluating our fixed costs. With the proposed amendments, you not only totally disregard the current financial problem but defiantly you continue to add to our financial burden. You make all the rules; we get to pay for all the mistakes—certainly not a due process.

In conclusion, we respectfully urge you to reconsider and refrain from passing these amendments. Rather, we strongly suggest that you ask labour and management to go back to the table; you provide them with concrete instructions to anchor their discussion on financial responsibility first and foremost; perhaps you consider privatization of all or part of Workers' Compensation Board; and most important, have a totally separate class for franchised automobile dealerships, separate from independent mechanical repairs and bodyshops.

What we're asking you for is a just understanding and an equitable burden of the total cost of WCB. Thank you for your patience and your understanding.

Mrs Yvonne O'Neill (Ottawa-Rideau): I just want to say that I think I understand your business. My father-in-law was a car dealer. He's been dead for 15 years and some of his employees are still in touch with our family, so I know the way you relate to your employees.

I really feel that you have hit the nail on the head when you talk about the broken promises, and we've got them in writing on several occasions from the Premier himself. Is there any way in your mind that Bill 165 can be fixed? I know the answer that the government's going to give to your suggestion to go back to the table, and that's a royal commission. Do you feel there's any hope for either of those channels for yourselves, particularly for automobile dealers in this province?

Mr Laberge: Well, we certainly prefer the royal commission to Bill 165.

Mrs O'Neill: You prefer the royal commission?

Mr Laberge: Yes. Hopefully they'll get back to the table and recognize that the problem is a financial one. You have to look at assets and liability and add the two together.

Mr Carr: Thank you very much, sir, for your presentation. You talked a little bit about the Premier and the broken promises. I think one of the mistakes that business has made is that they've trusted this Premier. I've watched while the police, 6,000 of them, came to the Legislature and protested, and I watched him back down when he was confronted. The same thing over auto insurance. Business has tried to work like they did with the Liberals and the Conservatives in dealing practically and constructively. I tell you, the only thing this man understands is when you confront him and when you come at him head-on, and that's what you need to do. The good news is he won't be around six months from now.

You talked about anchoring. What I think needs to be done is you need to say very clearly: "The assessments have to be competitive and you can't run an unfunded liability; now you tell us what needs to be done." The advisory committee that the Premier set up basically did that and came up with a program, and as we saw, other jurisdictions are doing it. You don't need to be a rocket scientist. We could take plans in New Brunswick, Alberta and Manitoba and we could fix the system today. The next government, whoever it will be—it won't be these guys but it will be one of these two, and whichever government comes in, do you think they should take that advisory committee plan, put it together, keep the assessments competitive, don't run an unfunded liability, and then you tell us how to do it?

Mr Laberge: Absolutely. I can give you one example, very quickly, indulge in your patience. In 1983, our premium at a dealership was \$23,000; in 1994, \$192,000.

Mr Fletcher: Thank you for your presentation. Let's forget the politics about who's going to be fired next year, and look at—

Interjection.

Mr Fletcher: —the problem of workers' comp—

Mr Laberge: Excuse me.

Mr Fletcher: I know, I know. That's what we put up with, and look—

Mr Carr: You won't have to put up with it much longer.

Mr Fletcher: —at the problems with workers' comp. You have some very interesting ideas. I think some of them that you look at are good and some I can't agree with. One statement is that the economic viability of the program is first and foremost, but if we go back to what the Meredith concept of compensation should be, it is to compensate the worker for the time lost and also to try and get the worker back on the job as soon as possible.

Ms Thomson: But someone has to pay for it, though. There has to be money to pay for it.

Mr Fletcher: Oh, I agree, and that's what I'm coming to. When we look at how we can do that in that context of looking at what the objectives of compensation are, then we can look at the fiscal responsibility of it, and I think the Premier in his statement has said, "We have to look at the fiscal responsibility of the Workers' Compensation Board."

Mr Laberge: Permit me to interject here. Is it reality to spend the money first and find out if we have it after?

Mr Fletcher: I think that's what's been happening over the years and that's why we are where we are.

Mr Laberge: We need to really sit down, both sides, regardless of party or colours, and fix the problem—

Mr Fletcher: You're absolutely right.

Mr Laberge: —because the small business, and I would like to reiterate this point, dealerships employ between 20 and 150 employees, a lot of small family businesses. We do not have the financial resources. This province changed the OHIP program, which was to share costs with employees, and turned it into a health tax, again a burden to the employer. There is only so much we can charge our customers and we're not going to be competitive, so we have to fix it.

Mr Fletcher: Let's hope the royal commission gets into that.

The Vice-Chair: On behalf of this committee, I'd like to thank the Ottawa New Car Dealers' Association for their presentation to the committee this morning.

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SOUTH OTTAWA COMMUNITY LEGAL SERVICES

The Vice-Chair: I'd like to call forward our next presenters, from the South Ottawa Community Legal Services.

Mr Will Ferguson (Kitchener): Mr Chair, while they make their way up, I just wanted to advise the committee that earlier this morning I met with two injured worker groups that could not get on the agenda for today, one from Ottawa and the other one from Arnprior. I have advised the groups that they ought to write the committee. They wanted me to advise the committee, in a nutshell, of one thought: They said that—

The Vice-Chair: I don't think that's appropriate at this time, Mr Ferguson, because they are allowed to send in a regular submission, in fairness to the people who are scheduled and are presenting to the committee.

Good morning and welcome to the committee.

Mr Charles McDonald: Good morning, ladies and gentlemen. My name is Charles McDonald. I'm a lawyer from a community legal clinic in the south of Ottawa. This is Ms Caroline Harris-McDonald. She's a lawyer from a community legal clinic in the west of Ottawa. Ms Harris-McDonald will be making our presentation this morning, following which I'll try to answer any questions that you may have.

Ms Caroline Harris-McDonald: Due to the constraints of time, we will be limiting our oral presentation to four aspects of Bill 165 which we consider the most critical. Our written submissions address these and other aspects of the bill.

I'd first like to address my comments to the de-indexing provision contained in section 33 of Bill 165, which seeks to limit the indexing of most injured workers' benefits. At the present time, workers' benefits are increased once per year, based on the change in the consumer price index. This is at section 148 of the present act. Bill 165 introduces a new formula which is three quarters of the consumer price index minus one, to a maximum of 4%.

It's clear that this section was introduced to cut costs; however, we must address the other effect of this section, which is to decrease the value of workers' benefits. This effect may not seem so drastic in periods of low inflation such as we are experiencing presently; however, in periods of high inflation, the value of workers' pensions could decline dramatically.

We recognize that many people presently are experiencing frozen salaries or wage reductions; however, injured workers are an especially vulnerable group. Their benefits are often their only source of income, they often will not be able to return to any form of gainful employment as a result of their disabilities, and they've lost not only their immediate income from their job, but their ability to return to work or to be promoted in their work. Thus, while others may retain the ability to change jobs or be promoted in the future, injured workers often do not have these opportunities, and they deserve to be protected from inflation.

We also have other concerns regarding this section. This cap on indexing not only limits increases in benefits; in some cases it may actually cause decreases in a worker's benefits. This is as a result of the manner in which a future economic loss award is calculated. A future economic loss award is set at 90% of the difference between a worker's net average earnings before the injury and the net average earnings a worker is likely to be able to earn, as deemed by the board after the injury.

With respect to the second aspect of this calculation—the deeming part—the board uses real wages for jobs in deciding how much the worker is likely to be able to earn after the accident. These wages will go up with inflation. With respect to the first part of the calculation—the net average earnings of the worker prior to the accident—these will be subject to the Friedland formula, the cap on indexing. So if the deemed post-accident earnings are y and the pre-accident earnings are x , then the future economic loss is calculated as 90% of x minus y : 90% of

the difference between what the worker earned before the accident and what the board deems the worker could earn after the accident.

As the pre-accident earnings are subject to the Friedland formula, they will go up at a rate less than the rate at which the deemed post-accident earnings go up. So if we look at the calculation 90% of x minus y , if x increases at a rate less than y , the future economic loss award goes down and can eventually be wiped out altogether. This is based on section 43 of the present act, which defines how you calculate the future economic loss award.

In our opinion, there are better ways to save money if that is the goal of this section of the bill: one, cut down the number of accidents. They went up 45% between the years 1992-93 and 1991-92. That is a dramatic increase.

Secondly, get injured workers back to work. Presently the board's success rate is extremely poor. Only 21% of injured workers with future economic loss awards were actually employed two years after the initial future economic loss award determination.

We should be addressing these problems and finding out why the return-to-work rate is so low. Real savings are here, not in cutting workers' benefits and redirecting them to the welfare office.

We could also increase money taken in by the board by expanding coverage of those sectors of the workforce that are presently not covered, or getting rid of the experience rating discount which gives employers more incentive to dispute claims.

I'd now like to address the issue of the \$200 supplement increase.

When we are looking at the present 147(4) supplement, we are discussing workers who were injured prior to 1990. These workers are for the most part surviving on small monthly pensions which were supposed to compensate them for their loss of earning capacity. However, these pensions have failed to achieve their end and many of these workers have to supplement their meagre benefits through social assistance.

Some of these workers were assisted by the former subsection 45(7), the older workers' supplement, paid to older workers who in all likelihood would not return to gainful employment. This was limited to the equivalent, approximately, of the old age security pension, which is between \$300 and \$400 per month. Now it is the 147(4) supplement which is paid to all workers who in all likelihood would not benefit or have not benefited from vocational rehabilitation.

Unfortunately, many workers were often found not to qualify for these supplements. There are many cases where someone who is in receipt of a pension and is not working has been refused a 147(4) supplement on the grounds that at some time in the past he received some vocational rehabilitation assistance and that he should be able to find a job, even though he can't find a job. So he's not eligible for a 147(4) supplement. He's in receipt of only a pension, and it's not enough on which to survive financially.

The other thing the committee should know is that

147(4) supplements are subject to arbitrary determination by the board and, in any event, terminate when a worker reaches the age of 65.

It seems that this bill is attempting to assist some workers injured prior to 1990. However, this section arbitrarily excludes other workers who generally require some further financial assistance. These groups are listed at pages 3 and 4 of our brief.

If we really want to assist workers injured prior to 1990, we should be tying this \$200 increase to their pension awards, not to their supplements. We should be granting an increase to anyone who has received a pension and who is not working or is working at a wage loss. If we do this, then these \$200 increases will be permanent and not tied to the present 147(4) supplement, not subject to arbitrary termination by the board, and not terminated at the age of 65.

The other thing we must do is fulfil the promise made by the government that this \$200 increase will not be subject to a clawback by welfare or family benefits agencies. Presently, there is nothing in the legislation to prevent this.

I'd now like to address the issue of employers' access to medical information.

Section 8 of Bill 165 proposes a change to section 51 obligating a physician, with a worker's consent, to provide medical information about a worker to the worker's accident employer. On the surface, many may feel that employers should have this type of access. However, how many of us here would like our employer to have unfettered access to our medical file? Yes, the employer requires our consent, but what happens if we refuse this consent?

Our major concerns with this aspect of the bill are as follows:

First of all, the confidentiality of the patient-doctor relationship is destroyed.

Secondly, although it can be argued that the worker has the right to withhold consent, the question remains, what repercussions will the worker face if he or she exercises this right? Will she be deemed uncooperative by the board, or will she face repercussions at work?

Thirdly, the section does not require that the employer have a specific reason for obtaining the medical information. Should an employer who is not interested in arranging modified work have unrestricted access to the worker's medical file?

Fourthly, unlimited access of an employer to confidential medical information has a tremendous potential for abuse.

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We're not saying that the employer should never have any access to medical information. However, as with any type of access to private information, there must be safeguards. The circumstances in which an employer can obtain this information and the type of information the employer can obtain must be controlled.

What we suggest has to be established is that the employer is genuinely interested in setting up some type

of modified work to assist the worker in returning to the workplace. The reason the employer wants the information must be to assist in accommodating the worker in a board-approved return to work. The medical information should only be that which would assist the employer in this regard; that is, information as to medical restrictions and medical abilities.

The medical information should come from the board. There should be no direct access to the doctor by the employer.

This committee should also remember that the employer already has some controlled access to medical information when the employer decides to dispute a claim, and this is already in subsection 71(3) of the present act.

Finally, I'd like to address some comments to employer participation in vocational rehabilitation; that is, the new proposed subsections 9(4) and 9(5) of the bill.

Our position on these subsections is simple and straightforward. If the employer is unwilling or unable to provide modified work to the injured worker, the employer should have no role in determining a vocational rehabilitation program for the worker.

Vocational rehabilitation is necessary only in situations where the employer has indicated that he or she cannot or will not take back the worker. Therefore, the only interest is financial. It is a direct conflict of interest in participating in the designing of the vocational rehabilitation program to get the worker back to work.

In conclusion, in assessing this bill we must determine what it is we wish to achieve. If what we wish to achieve is simply to cut costs, the bill may be satisfactory. However, I honestly believe our goals are a little more sophisticated, a little more progressive.

We know that simply reducing workers' benefits and sending them off to be dealt with by welfare offices is not the answer. We ask you not to simply address cost cutting without looking at the big picture.

Our concerns regarding the bill are real, and if they cannot be addressed the bill must be scrapped.

Mr David Johnson: I thank you for your deputation. Just starting at the beginning with de-indexing and the concern with regard to cost, my suspicion is that what's happening here is an attempt to balance financial reality, in terms of injured workers but also in terms of all other workers, because all other workers are represented through the businesses that—for example, the car dealers who were here just before you. They employ a lot of people, and they have to be competitive, and they have to meet the realities. If they don't, they're out of business and their employees are out of a job. So I think there's a balancing act going on there in which workers' compensation is part of their cost, and there are all sorts of other costs—health premiums etc that they have to pay—and when they throw all those costs together it has to be a package that works, and I think this is part of it.

Prevention: Everybody is in favour of prevention. I've been on this committee now for almost a day and a half, and I haven't heard one deputation that has not emphasized prevention. The numbers I see in terms of the

annual report indicate that the number of registered claims are going down. From 1991 through 1993, each year, the claims have—actually going back further than that, the claims are going down. Maybe I'm misreading that, but it seems to me that maybe prevention is slowly starting to work and it's a reality, but there is that balance that has to be achieved, and I wonder if you've given thought to that.

We'd love to pay the injured workers twice as much, I'm sure, and I'm sure the WCB would, but somehow we have to survive in the real world, and the businesses have to be competitive. If we jack their rates up, then jobs are going to be lost.

Mr McDonald: I can answer that. Yes, we have given thought to that, and I'm happy that the number of claims has gone down. I'm wondering whether that's a result of real prevention or whether it's the result of the recession, but it's a good thing that claims are going down.

I think what we're saying, though, is this is not the right way to cut costs, especially for the workers after January 1, 1990, who have been injured. That's when the previous administration brought in Bill 162, which was the dual award system. Part of that is future economic loss, the wage-loss system. What we're saying, for that wage-loss system, it's the difference between two numbers: what you were making before the accident and what you're able to make after the accident.

It's reviewed every few years by the board. When it comes time to review, the wages out there will have gone up with inflation; what you were making before is controlled by the de-indexing formula, the Friedland formula. So that doesn't go up as quick. What you're actually looking at is a position where not only are these benefits not keeping pace with inflation but they might actually go down with this formula.

You might have somebody who's going to have future economic loss now, \$500 a month, because the board agrees he can't go back to his old job. In five years, that might go down to \$350. You're just not keeping up with inflation.

Mrs O'Neill: Inflation doesn't always go up.

Mr McDonald: No, inflation doesn't always go up and I hope it doesn't. We're in a time of low inflation right now. But there's no guarantee that's going to stay that way. Just in recent memory, we've had times of quite high inflation.

I'm glad you brought that up because that brings me to the 4% cap. That only kicks in at an inflation that I calculate about 7%. So that's going to hurt injured workers the most when there are times of high inflation, because that's when they're going to lose the most.

So what's the purpose of the cap? If we think that inflation is beaten, then why do we need the 4% cap? If it isn't beaten, if sometime in the future we're going to have high inflation, then what are we doing? We're just hurting them even more.

Ms Murdock: On page 4 of your submission, I know that you identified that the government had indicated that the \$200 increase would be tied to the worker's pension, but the rest indicates that you don't think it is. It is. It is

not ending at age 65. That's number one, the \$200 for those workers who are exempted.

The other thing that I wanted to talk about was the clawback. We had a question yesterday on that very subject. I clarified for the record at that time that the Community and Social Services ministry—it's a regulation that determines the deductions in terms of whether or not there will be clawbacks and that there will definitely not be any clawback on the \$200. For the purposes of your presentation, I wanted to just clarify that.

In the return-to-work concept on page 5, number 2—and I know it's in regard to the medical information, but if it's a prescribed form that is specifically designated for restrictions only, which has been said by labour and management and everyone, everyone is agreed that you need the limitations of what the worker can or cannot do in terms of capability of doing any kind of work—and early intervention, a key here—if it's that kind of thing, then I can't think of any worker who doesn't want to go back to work as soon as he or she is capable. Why would you believe that they would say no to a medical report that was very specific?

Mr McDonald: Okay. You've raised a couple of things. On the \$200 supplement, first of all, it is correct that you have to be receiving the permanent disability pension to get it. But the bill also says that you have to either be getting the 147(4) supplement or that you would've been getting it if you didn't reach 65 on or before July 26, 1989. That's when supplements started. There are two preconditions.

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What we're saying is that we feel there are groups of workers out there who are on a permanent disability pension who are not back to work or are back to work at a job that's paying less, who never got the 147(4) supplement, and those ones are going to be left out. If the board—

Ms Murdock: They have to apply. They can still apply for it.

Mr McDonald: They could still apply, but the way the board works in that kind of case is like this: You're injured. If they say you are permanently injured, you're assessed for a permanent disability pension. If they think they can help you get back to work, they open a vocational rehabilitation file and you get a full supplement, up to 90%. That doesn't last for ever. At some point they say, "We think we've given you enough help, so we're going to stop the vocational rehabilitation file, whether or not you're back to work."

These days, the recession is often blamed, saying: "We've helped as much as we can. The fact you're not back to work is not our fault; it's because of the recession." At that point, you're left with your pension, and you won't get a 147(4) supplement, because the board says: "You should be able to get back to work. We've done everything we can to help you. It's not our fault you're not back to work. We're not going to give you the 147(4) supplement." Those people are not going to get this \$200.

Mr Offer: Thank you for your presentation. I guess

just as an outset, you say, based on your concern around the Friedland formula, that there are actual calculations that have been prepared by Michael Green and Nicole Godbout. I'm wondering if you might be able to share those calculations, send them in to the committee so that we might all—

Mr McDonald: I certainly can. Michael Green is a lawyer in Toronto.

Mr Offer: I guess we'd like to just see those.

Mr McDonald: Sure.

Mr Offer: I'm sorry, but in terms of the limitation of time, I'd like to deal with the employer's access to medical information. We have heard a variety of concerns around that, but there has also been some suggestion that maybe in section 8 what we should be doing is getting into some, I think the word was, "demedicalized" information. In other words, a doctor would provide information about injury and what the person can't do and then go from there, make it demedicalized. I'm wondering if you have a response to that position that was brought forward in terms of the concerns around—

Mr McDonald: That's what's being done now. The doctor sends medical reports to the board. The board has physicians on staff who look at these medical reports. Based on those, they determine medical restrictions and that's communicated to the employer. They tell the employer: "These are the medical restrictions. Are you able to find modified work to get this person back to work?" So that information should be communicated to the employer now by the board.

Mr Offer: So you're saying that there is sort of a demedicalization that's now going on from the board out to the employer.

Mr McDonald: I'm saying the board gives information to the employer on medical restrictions that the worker has as a result of the accident, so what's the purpose for the direct communication between the employer and the physician? That's just taking the board's role away from it, and we don't agree with that.

The Vice-Chair: On behalf of this committee, I'd like to thank South Ottawa Community Legal Services for its presentation to the committee this morning.

UNITED TRANSPORTATION UNION—CANADA

The Vice-Chair: I'd like to call forward our next presenters, from the United Transportation Union of Canada. Good afternoon and welcome to the committee.

Mr Michael Hone: Good morning, Mr Chairman and committee. My name is Michael Hone. As you'll note on our submission, there were two other persons, but they were called away on other business, one of them being the technical expert on the act.

With respect to our submission, the United Transportation Union is an international union representing rail and bus workers in Canada and the United States. Approximately 4,000 of the UTU-Canada members are situated in the province of Ontario. Although they are for the most part under federal jurisdiction for health and safety, they do come under the Ontario Workers' Compensation Act for coverage of workplace accidents and injuries.

By its very nature, the rail business is a dangerous occupation and the work is quite physical in nature. Injuries to our members who are in the operating end of the business—conductors and locomotive engineers—tend to be quite serious. When serious injuries occur, our members are off for lengthy periods and they often require retraining and placement elsewhere if their injuries preclude the pre-accident employment. UTU-Canada has established an office for its Ontario members which deals almost exclusively with workers' compensation problems. I can tell you, there's no shortage of work for that office.

UTU has participated actively in the reform process that has taken place over the past several years. The participation involved protesting against Bill 162, participating in the Chairman's Task Force on Service Delivery and Vocational Rehabilitation, and before that, making submissions to various standing committees and the Majeski-Minna task force.

We recognize that there are problems in the system. Some of these problems are real, some are perceived to be real, and we recognize that the government is attempting to resolve some of those problems by the introduction of this bill and by the royal commission that it has struck.

Because of the nature of the work that our rail members are involved in, remuneration can be quite high, often considerably beyond the maximums allowable in Ontario for workers' compensation purposes. When those members cannot be returned to their pre-accident jobs, they are left to jobs that pay considerably less than their pre-accident employment paid them, or quite often they were left with a future economic loss that inadequately covers their new circumstances.

Older members were often worse off, in that they ended up with meagre WCB pensions and, depending on the circumstances, with a supplement, but often without, and in addition, vastly reduced railway pensions, if they even qualified for such a pension. In short, they found themselves often in a situation of abject poverty. We know that prior to the introduction of Bill 162, employers were not obligated to return workers with disabilities to the workplace. Statistics suggest that there are over 40,000 workers receiving WCB pensions who have been judged as not being likely to benefit by rehabilitation assistance, and because of that determination, have remained unemployed. Many of those workers are getting social assistance in order to survive.

Even though Bill 162 was supposed to be revenue-neutral, and one of the main features that would have made it revenue-neutral was the obligation to return workers to the workplace after their injuries, almost the opposite had occurred in many workplaces. Workers have not returned to work; 78% of workers who have been off work for a year remain out of work. Statistics like those would certainly obviate any benefit that could have been derived from the supposed revenue neutrality of Bill 162. We know that a worker who is away from work for a lengthy period is very much more difficult to return to meaningful employment.

Couple that with diminished work opportunities due to recession and cutbacks, particularly in the rail industry,

and factor in the WCB's deeming of injured workers into jobs that they may be capable of working but which are not available to them, and we find major income loss and unemployment that is in the area of 40% for disabled workers.

Health and safety is another area of concern in the system. Rail members are under federal jurisdiction for health and safety and they are employees of schedule 2 workplaces, which means that the companies employing our members pay the entire cost of workers' compensation. To us, that is a problem in itself which was not addressed by the bill. However, the current system of financial incentives and penalties and experience rating encourages those employers who are experience-rated to do things like hide claims, appeal decisions, encourage workers to claim sick and accident benefits, and to not report accidents and injuries.

As representatives for schedule 2 workers, our union has long said that those things happen regularly in our workplaces. We have gone so far at times as to document the fact that the railway line officers' pay raises and promotions depended on keeping their departments' accident statistics at a minimum. If it was accomplished by good health and safety practices, it was great, but often it was just as noted above.

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Experience rating does not consider occupational disease claims with long latency periods. It does not even factor in good health and safety practices, because the measurements are not set up to measure things like the effectiveness of health and safety committees, return-to-work programs and committees and other prevention techniques.

We support the initiatives to make the WCB an arm's-length agency from the government. There has been too much interference by way of appointments to the board of directors. We believe that the WCB should be responsible to the parties that workers' compensation was put in place for: workers and employers.

The unfunded liability has been a cause for concern. UTU notes that the funding of the WCB is better now than it was 10 years ago. In 1984 there were sufficient assets to cover 32% of the WCB's liabilities, and presently the ratio is 37%.

Our union believes that better emphasis on health and safety, improved rehabilitation practices, early return to work and a greater emphasis on prevention will allow the funding ratio to continue to improve.

We hear that some are saying that the bill will cause the unfunded liability to increase from the present \$11.6 billion to \$13 billion in 2014. If those proponents of that theory were telling the whole truth, they would have had to tell you that the funding ratio will have actually increased to 55% from 37% and the figures that are being suggested are in 2014 dollars, which are inflated.

UTU-Canada does not come here to suggest that Bill 165 addresses all of our concerns, but it does cover a large part of the problems that we see. While we were not part of the Premier's Labour-Management Advisory Committee, we do believe that the bill adequately reflects

the agreement that was negotiated. As a labour union, we believe that our word is bond and we continue to support what was negotiated even though it does not cover all of our concerns. We have to respect that negotiation process.

There are some concerns with the drafted language of the bill. We have an attached appendix. The clauses that give us concern are highlighted there simply because we do not have sufficient time today to go over those concerns clause by clause.

With respect to subsection 51(2), this is the section which deals with the prescribed medical information. We do not believe that an employer who has rejected the concept of cooperative return to work, who has not implemented a WCB-approved program, should have access to the worker's medical information that is contemplated by the legislation. In that case, we ask how the worker's doctor can feel comfortable in providing medical information to that kind of employer. The doctor must be able to be satisfied that the information provided will help in the worker's recovery and is being used in a program that is approved by the WCB. The information provided by the doctor must be limited to functional limitations and restrictions and contain no diagnostic or other medical information.

There are other sections of the bill which we would like to note:

Does subsection 8(7.1) eliminate the value of private disability insurance?

Will subsections 53(10) and 53(13) allow a non-cooperative employer to interfere in a worker's vocational rehabilitation?

Does subsection 95(6) allow the Occupational Disease Standards Panel to achieve independence as contemplated by the act?

Can clause 147(14)(b) be expanded to include those workers who are now beyond age 70 who were already 65 years of age in 1989 when Bill 162 provided for supplements under subsection 147(4) but excluded them?

Do we actually need the cap as called for in the Friedland formula?

Should we eliminate section 93 to give the Workers' Compensation Appeals Tribunal the independence that it needs to be a truly final level of appeal?

The bill provides for a \$200-per-month increase to those disabled and unemployed workers who were injured prior to 1990, but as noted above, some workers who were already 65 years of age when 147(4) supplements were put in place will be excluded from receiving the increase. UTU believes that the numbers are small and that as a matter of justice and equity, those workers should also receive the \$200-per-month increase to their pensions.

Friedland will not apply to the most vulnerable of injured workers, nor to their survivors, but will affect approximately 150,000 workers who have returned to work. We hope that the bill will provide better return-to-work potential and better vocational rehabilitation services to mitigate the erosion of benefits that will be caused by applying the Friedland formula.

The Friedland formula will reduce workers' benefits.

We declare that UTU-Canada does not subscribe to any formula or philosophy that reduces workers' benefits. We support initiatives in the bill which will reduce costs by providing a greater emphasis on prevention and re-employment.

We again reiterate that the union reluctantly endorses the Friedland formula because it came about as a result of the negotiations. The formula adopted, though, is more suited to a pension plan where benefits are provided at or near a normal retirement age, as opposed to benefits being required to be paid to workers who become disabled at a much younger age and who will feel the effects of inflation over a longer period than one who retires later in their life.

We are fearful that the capital will erode benefits while, at the same time, revenues that are available to the WCB are tied to workers' wages that are increased due to collective bargaining and general wage increases designed to protect wages against inflation. The result would be that workers get less in inflationary times while the WCB revenues rise with inflation. On the basis of the foregoing, we suggest that the cap should not be allowed to remain in the bill.

UTU-Canada supports the notion that Bill 165 addresses the poverty issue somewhat and we support the fact that the provisions for increased penalties for non-cooperation will assist in making workplaces safer and there will be more timely re-employment of injured workers. Just as important, we believe that the initiatives will have a significant impact on the unfunded liability. Not only will experience rating measure the things that it does now, but it will encompass the measurement of health and safety practices and return-to-work programs. As we have already stated, we believe that prevention and effective re-employment are the only true ways to reduce the costs to the system.

As we have noted already, UTU-Canada supports the bill with respect to the governance issue. A bipartite board of directors will allow the two stakeholders—workers and employers—an equal say. Decisions made by the board of directors will reflect the wishes of the respective stakeholders' communities.

The government has considered the larger concerns that have not been addressed by the bill: issues such as coverage, universal disability insurance, entitlement, occupational disease, benefit levels and indexing. We believe that the royal commission should investigate and report on those areas that are beyond the scope of Bill 165. We look forward to contributing our thoughts and ideas to the royal commission. We hope that there would be an all-party agreement to implement the report of the royal commission. Thank you for allowing us the time to present our views.

Mr Daniel Waters (Muskoka-Georgian Bay): Okay, I'll try to do this quickly. I have two questions that I'll put forward and then get you to respond to.

The first thing is that we recognize that there's a problem with finances at the WCB. If you look back and go back in history, what happened was in the late 1970s and early 1980s, employers didn't pay the proper assessment, and now they're having to pay for that. So you see

assessments going down elsewhere around the country. But I would ask at the same time, because you deal with people across the country, is there any progressive legislation going on anywhere in Canada at this point in time to help the injured workers? That would be the first question.

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The second one was that yesterday when we were in Sault Ste Marie, UTU did a presentation there and they talked about how the Sault Ste Marie Transit Commission had a return-to-work joint committee and how it worked. They had protocols set up, a way of doing it and it seemed to work well and it was a win-win: The workers were back to work; it was cutting their costs. Do you have any experience in that here or is that just an isolated, local thing at Sault Ste Marie?

Mr Hone: With respect to other areas in the country, I am not the technical expert on the WCB. I do know, however, that through the initiatives of the Ontario government there have been changes made, the one being at Sault Ste Marie and promotion of those types of things to happen, that have helped cut costs and helped the injured worker.

In the first part of your question, you talked of the costs and that being very important, and from our perspective that certainly is important. My experience also takes me into the US and I'm talking in terms of rail carriers in the US. Their assessment is under the federal employers' liability act. The US railway carriers, class 1 carriers, made a submission to the Supreme Court that their cost per employee was \$3,700, in the area of \$2 billion, I believe. If you break that down in Ontario, I believe the cost works out to about \$1,800. I think there's quite a difference. While the costs are significant, there are other areas and other jurisdictions in other countries where it's much, much more.

Mr Offer: Thank you for your presentation. It's interesting to see on page 5 that the United Transportation Union of Canada endorses—reluctantly so, however—the Friedland formula because it came about as a result of negotiations at PLMAC. I think that will be interesting information.

My question is basically twofold. The first is an "if" question. If there had also been an agreement at PLMAC that the purpose clause was to have financial responsibility, would you be in favour of that? If the purpose clause of the act was to contain a clause dealing with financial responsibility and if that had been negotiated and agreed upon, would the United Transportation Union of Canada be in agreement?

Mr Hone: I understand there was some discussion on that and there were negotiations on that particular issue. Correct me if I'm wrong; I'm sure you will.

Mr Offer: No, I'm just asking a question. I'm trying to get the answer.

Mr Hone: Whether we support being efficient and effective—

Mr Offer: In the purpose clause.

Mr Hone: —and putting that into the purpose clause, I'm sure we could live with that, yes.

Mr Offer: Thank you. I just would like to get your thoughts on one other thing, and it's not part of your brief, but we have heard from injured workers—and I don't want to speak collectively, but we have heard suggestions from some injured workers that, dealing with the governance of the board, they would like to have a seat at the table, statutorily. The purposes of the act are all geared towards injured workers and some are in unions, some are not. We have heard, I think in fairness, that they would like to have a seat at the table guaranteed by statute and not at the whim of anyone else. What would your position be on that? If you haven't directed your mind to that, that's fine.

Mr Hone: No. Our position is that the injured worker is in fact represented. In fact, two of the representatives on the panel are injured workers themselves. But I also understand, to go a little beyond that, that there has been a commitment made by the OFL that one of the public positions could be designated for the injured worker and someone could be put in there.

Mr Offer: Thank you very much; I appreciate that.

Mr David Johnson: I also thank you for your deputation and your emphasis on prevention and re-employment, which I see clearly within the presentation, and it's one that we've heard, I think, from all groups: injured workers, employers, union representatives. Those are probably the three key deputants and your brief is consistent in that.

You've also brought some new information, perhaps, that I've heard at any rate, with regard to the ratio of the assets to the WCB's liabilities. You've pointed out on page 3, I guess it is, that the projection is that the assets will cover 55%, by the year 2014, of the liabilities. That would be, I presume, and perhaps question, with the implementation of the Friedland formula.

Mr Hone: That's correct.

Mr David Johnson: So that if the Friedland formula was not introduced, number one, your ratio would no longer hold. Maybe you could comment on that.

Secondly, we've heard from the car dealers' association, earlier today, that the assessment rates have gone up 92% in the past 12 years and they've indicated in their brief that that was to remove the unfunded liability, but obviously it didn't happen and the unfunded liability has grown. So I think it indicates that circumstances can arise whereby, even without the Friedland formula—or even with the Friedland formula being introduced—indeed the liability could be greater than 55% of the assets. I wonder if you would comment on that.

Mr Hone: With respect to the liability and the change, I think you're correct that it could change; it could also go down.

Mr David Johnson: It hasn't been the history, but I suppose it could happen.

Mr Hone: I think the projections were based on very conservative estimates in calculating the unfunded liability. The one thing that wasn't factored into that was a growth rate. I think the growth rate was 4%. Today's paper indicates that the projected growth rate is 6.4%. I think that that will have a tremendous impact on what

happens to the unfunded liability in the future. So it can go up but I'm very hopeful that it'll go down, and I think that there are some clear indications in the economy that in fact that will happen over a period of time.

Again, I emphasize that when the calculations on the unfunded liability were done, the estimates were done very carefully. We get into that with railway pensions and how they calculate their unfunded liabilities, and a 1% change in the interest rate back in 1969 on the CN pension plan meant that \$374 million were removed from the CN pension plan by the railways. So there are major changes that can take place with 1%. In fact, it's 2.4% right now.

The Vice-Chair: On behalf of this committee, I'd like to thank the United Transportation Union of Canada for their presentation this morning.

This committee stands recessed until 1:30.

The committee recessed from 1229 to 1338.

OTTAWA-CARLETON PUBLIC EMPLOYEES' UNION

The Vice-Chair: I'd like to call this committee back to order. I call forward our first presenters for the afternoon, the Canadian Union of Public Employees, Local 503. Good afternoon and welcome to the committee. Just a reminder that you will be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat briefer to allow questions and comments from each of the caucuses. As soon as you're ready, could you please identify yourself for the purposes of the record and then proceed.

Ms Victoria Jenkins: I'm Victoria Jenkins. I work with CUPE Local 503 here in Ottawa. With me is Mr Clarence Dungey, who is the national representative for CUPE, also at Local 503.

Many challenges face the Workers' Compensation Board. High unemployment and a changing makeup of the labour market have contributed to declining revenues. The recession and economic restructuring delay re-employment of injured workers and increase costs.

Internally, the board must deal with the complexity of administering three separate acts. Changes in Bill 162 which dramatically amended the Workers' Compensation Act in 1990 are still being implemented and their full impact is not yet known.

Administrative delays, difficulties with re-employment and new areas of entitlement add costs for employers and workers. The unfunded liability continues to be a concern even though the board's funding ratio is gradually rising.

The Ontario government has now come forward with Bill 165, in conjunction with the royal commission, to deal with some of the more pressing problems in the system. The changes were drafted following negotiations between labour and management. Some compromises were required from both parties. Although the bill reflects the negotiated agreement, some further changes in the proposed language are required to ensure that the act is workable.

What can the Ottawa-Carleton Public Employees' Union contribute that would be useful in a 20-minute presentation?

By way of introduction, we represent about 5,000 inside and outside municipal workers in Ottawa-Carleton. Our focus is on workers recently injured and those who are in the process of returning to work. Our greatest concerns are prevention of work-related accidents and illnesses, administration of claims and return to work, and the continued viability of the system.

Prevention of work-related accidents and illnesses: The union and the employers of our members believe that prevention is the best way to reduce the human and financial cost of occupational injuries and illnesses. We have jointly developed occupational health and safety policies and programs. These build on an established joint approach to health and safety. There is extensive training, support for the work of health and safety committees, and a commitment to proactive measures by management and staff.

As an attempt at prevention, the WCB's experience rating process uses the wrong criteria for rating employers' WCB claims records. By focusing on costs—we see these as the symptoms rather than the causes of WCB claims—experience rating encourages underreporting, challenges of claims and appeals of decisions. The costs of diseases with latency periods or delayed onset are not considered, thus discouraging attention to the sources of these illnesses within the working environment.

The proposed additions, subsections 103.1(1) and (2) promote and reinforce efforts aimed at the cause rather than the symptoms of workplace accidents and illnesses. They also support proactive measures and requirements already established under the health and safety act. Consideration should also be given to connecting experience rating to the accreditation program now being developed by the Workplace Health and Safety Agency.

Administration of claims and return to work: Where differences arise in a claim, the resolution process is slow and cumbersome. Strengthened and streamlined return-to-work provisions and penalties for non-cooperation in Bill 165 will promote a safe and timely return to work.

We would like to see greater emphasis on a cooperative approach to return to work. This could be accomplished if joint re-employment committees were required, similar to those in occupational health and safety. Their role would be to coordinate the return-to-work process and represent the interests of claimant, coworkers and employers. Regardless of how close the apparent match between the worker's needs and the proposed modified duties, a cooperative or hostile working environment will be a deciding factor in any return to work.

Provision of medical information directly to the worker and the employer will assist in early return to work. However, the proposed wording of subsection 51(2) does not encourage a cooperative approach. It should be amended to read:

"A physician who receives a request from the worker or from the employer via the worker should provide each of them and the board with such medical information as may be prescribed, where the employer has implemented a board-approved return-to-work program."

Although consent of the worker is required for the

physician to release information, we are concerned that the worker may be deemed uncooperative by the WCB if he or she refuses. Greater focus on a cooperative approach involving the injured worker in planning for return to work would assist the worker to contribute positively to the process.

Provision of diagnostic information is a violation of right to privacy. Clause 63(2)(h.1) should be amended to read:

"prescribing non-diagnostic medical information for the purposes of subsection 51(2)" and so on.

Employer participation in vocational rehabilitation: The changes to section 53 require greater involvement by the employer in the vocational rehabilitation process. However, if the employer is uncooperative, the proposed subsection 53(10) might give the employer the right to interfere in rehabilitation. It should be amended to read:

"...the board in consultation with the worker, the employer where it has been established that the employer is cooperating in the worker's rehabilitation" and so on.

If the worker is no longer employed by the accident employer, does subsection 53(13) still allow the employer to participate in decision-making on vocational rehabilitation assistance? This should be changed to:

"At the request of the worker or on its own initiative, the board may extend the period during which a worker is to be assisted in seeking employment for a further period of up to six months."

Under "Appeals," many workers are not in a position to take advantage of appeals available to them under subsection 54(11), and access to assistance from a union, legal clinic or other agency may be limited. Allowing the board, on its own initiative, to inquire into whether the employer has fulfilled its obligations under section 54 will address this issue.

The proposed mediation services under section 72.1 will facilitate the resolution of differences and promote savings through early return to work.

There are many other problems with re-employment provisions in the act. Employer size and time limits exclude many workers. About 90% of Ontario businesses have less than 20 employees. High unemployment rates make it more difficult to return injured workers to the labour market. In fact, there is a 78% rate of unemployment for post-Bill 162 workers at future economic loss review 1 stage. Where the injured worker is unable to find employment, deeming wages of non-existing jobs in calculating future earnings loss imposes a double penalty on injured workers. We're looking to the royal commission to address some of these issues when it begins its work.

We'd like to also propose something with respect to section 93. There is growing pressure for the WCB board of directors to use section 93 to challenge decisions of WCAT. As a court of last appeal in workers' compensation, WCAT decisions should not be subject to any review by the board. Section 93 must be repealed to guarantee WCAT independence. Only this form of legislative independence will ensure a free and unbiased workers' compensation appeals system.

Ongoing viability of the WCB system: We recognize that the Friedland formula arose as part of a negotiated package and that some compromises had to be made to reach an agreement. Although 45,000 vulnerable persons will be exempted from its provisions, 134,000 other workers who do receive WCB disability pensions will see them eroded. Over a long period, particularly in times of high inflation, the proposed reductions would result in rapid erosion of the value of benefits, especially for younger workers. WCB revenue would continue to rise at the rate of inflation because it is tied to wages; thus we see no justification for the 4% cap under the Friedland formula in subsection 148(1). It should be removed. The maximum CPI increase recognized by the original Friedland formula was 10%, with any excess adjustment carried forward to a year with less than 10% inflation. The last sentence in subsection 148(1) should read, "The indexing factor should not be less than 0%."

Savings resulting from the application of the formula will help in improving the board's funding ratio to 55%. Although we are uncomfortable about the application of the formula, there is some consolation in the purpose to which the savings will be directed. However, we note that there is no effort in Bill 165 to address the unfunded liability through adjustments to the assessment rate for employers.

The \$200 increase to persons receiving a subsection 147(4) supplement: Savings from Friedland will also provide for a \$200 monthly increase to 40,000 unemployed disabled persons who were injured before 1990 and who receive supplements under subsection 147(4). A small group of workers were excluded from 147(4) supplement because they were age 65 or older in 1990. Paragraph 147(14)(c) should be amended to include them. It should read:

"if the worker is in receipt of a permanent partial disability award under subsections 143(1) of the pre-1985 act or 45(1) of the pre-1989 act, and had reached the age of 65 before July 26, 1989."

In summary, the most effective way to reduce WCB costs, as I know you've already heard from many other people, is to prevent accidents and illnesses through effective health and safety programs. Improved return-to-work provisions are needed for those workers with occupational injuries or illnesses. Bill 165 will move Ontario employers and injured workers in this direction. We look forward to the royal commission inquiry into financial viability, entitlement, benefits, alternate systems, coverage and so on.

Thank you very much for the opportunity to participate today. Any hard questions, and how about a few easy ones?

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Mr Offer: Thank you very much. You've touched on some of the major aspects of the legislation, not to say that other aspects are not. But you've certainly touched on an aspect of the legislation which, as I don't think will come as a surprise to you, is most often talked about, that dealing with the Friedland formula. I just want to get your position on that, although I think it's fairly clear. You're saying that the Friedland formula as is found in

section 148, as amended, should be removed?

Ms Jenkins: No, we're not saying that at all. We're saying that we're uncomfortable about the provisions of the formula but we recognize that in order to get an agreement on other areas that were of importance to us, this provision was necessary.

Mr Offer: Okay. If you could just then help me with this: In point 3 of your presentation you say, "There is no justification for the 4% cap under the Friedland formula in section 148(1)," and then you say, "It should be removed."

Ms Jenkins: The 4% cap should be removed, not the Friedland formula.

Mr Offer: So that portion of subsection 148(1) that has the 4% attachment should be removed.

Ms Jenkins: That is correct.

Mr Offer: My question is, if it is not removed, should the bill be passed?

Ms Jenkins: Mr Offer, no piece of legislation is going to meet all of our requests or all of our wishes. We will live with it if that is included in the legislation.

Mr Offer: If injured workers of this province wish to have a seat on the board of directors of the Workers' Compensation Board, if they wish to have a say in how matters and issues are discussed at the board, what is the position of your particular union to that?

Ms Jenkins: This is, I'm sure, a very important one to you, Mr Offer, because I've heard you ask it several times before. Yes, I think that would be a reasonable thing to do.

Mr Carr: Along the same lines, I said in the Sault yesterday that if any other government had brought this bill in, every union would have been swinging from the chandeliers and we would have had to peel them off the roof.

On page 4, it says 134,000 workers will have their pensions reduced and eroded. Now that we've gone through the social contract, where you had contracts opened up, how can you justify to your membership something that takes away money from injured workers? How can you say, as you did to Mr Offer, we should still vote for it?

Mr Clarence Dungey: Let me answer this way: I've been around for 43 years and any successes that I have had were on the basis that is compromise. Sometimes that flies in the face of labour unions and their principles and policies.

Let me give you an example. My answer to you is this: When the social legislation came down, Local 503 met with the employer. We said: "It's inevitable. It's going to happen. Let's not hassle. What's our bill?" We established what the bill was and we took a 1.5% reduction in wages. Some 78% of the 5,000 people voted in the process and 93% supported it. So you can't be inflexible.

Mr Carr: As you know, the business people on the Premier's Council feel they weren't consulted. You say there is an agreement. They feel, to use a quote, "stabbed in the back" on it, because that isn't what they agreed to. So there isn't agreement on this. How can you say there

was an agreement when the business groups have been coming through, and the Premier's Council, saying: "No, wait a minute. There was no agreement. We didn't agree to this"? How can you say there's been an agreement when in fact the groups and the participants on the Premier's Council said: "No, this isn't what we agreed to. The bill we got was not what we agreed to"? I know there are going to be disagreements, but you know that's what they are saying. How can you say this was a compromise when in fact business is saying: "It is not a compromise. This is not what we agreed to in this bill"?

Mr Dungey: My answer to you, sir, again, is that whenever two bodies meet, if they're totally inflexible, they will get nowhere. I don't know what really happened at those times at those meetings; I wasn't there. What I do know is what I involve myself in and what my membership says to me. I am here today with Victoria to present a position, and she has said to you very clearly some things we're unsatisfied with. The question from the previous speaker was, "Will you live with this bill if you don't get that?" The answer is yes. Come on, it's a real world out here. Let's not hang ourselves in the chandeliers for the sake of hanging ourselves in the chandeliers.

Mr Fletcher: Thank you for your presentation. Again, swinging from the chandeliers: I think everyone realizes this is the first government that ever did invite labour to the table when it came to a negotiation for workers' compensation. I can understand why there would be swinging from the chandeliers if it was another government, because they wouldn't be invited to the table in the first place.

The New Brunswick plan that the Conservatives are pressing so hard is cutting benefits to injured workers to 80% a day for the first 39 weeks, and workers off the job are getting 85%, and you don't get paid for three days, and stress is not going to be covered any more. So the cuts that New Brunswick is doing are something the Conservatives have been talking about, and what the Liberals have also advocated is to put it on the backs of injured workers.

This Bill 165 may not be the end-all to all of the problems, but from what I can see, I think it's a start to start putting into place some of the controls that have to be put into place, and then we get to the royal commission, which will take a deeper and better look at what workers' compensation is all about.

When it comes to the royal commission, and I asked this question this morning, (a) if we're around, I know you'll be at the table; that's a given, and (b) if you're at the table, what kind of changes to workers' compensation do you see as being fundamental to helping getting people back to work and also making sure that they're compensated at the right level of pay?

Mr Dungey: To your first observation, let me repeat what I've already said publicly and provincially. I've got a case of Scotch that Bob Rae's getting back in anyway, with a minority government. So we will be there, and yes, we will participate in the royal commission.

Ms Murdock: He wants us to bet our mortgage and our house on that last comment, but I agree with him.

The Vice-Chair: On behalf of this committee, I'd like to thank the Canadian Union of Public Employees, Local 503, for bringing us their presentation this afternoon.

OTTAWA-CARLETON
HOME BUILDERS' ASSOCIATION

The Vice-Chair: I call our next presenters, from the Ottawa-Carleton Home Builders' Association. Good afternoon and welcome to the committee.

Mr Richard Lee: Good afternoon. My name is Richard Lee, and I'm the executive director of the Ottawa-Carleton Home Builders' Association. I was expecting Brian Rowley, our safety committee chairperson, to be with me, but he hasn't made it. That's fine; I can continue on.

Very briefly, the Ottawa-Carleton Home Builders' Association represents the residential construction sector in the Ottawa region. Our 360 members account for about 85% of the new home construction in the city.

One other point I'd like to make in an introduction is that the residential construction group is in the assessment rate group, I think it's 764, and they pay \$7.16 per \$100 of payroll. That is the highest rate group in the construction sector and I believe in the WCB. So our members are coming at this with a bit of a prejudice, knowing they are paying the highest rate, I guess in Canada in effect.

We have provided to Tannis today copies of a written brief that's more detailed than what I'm going to give you today. In the brief we've commented on many aspects of the legislation and we've offered some solutions that we feel would be more appropriate.

I will note, however, that we have not provided a clause-by-clause review in detail of Bill 165. It's our belief—and Brian is going to join me, if he may—that the legislation as tabled is seriously inadequate and it does not solve the very, very profound problems at the WCB.

So we are coming today to ask that Bill 165 be withdrawn and replaced with a new, more fiscally responsible legislation that better addresses the problems at WCB. Let's not defer WCB reform to another day and another government, and Bill 165 does not provide the reform that we need today.

Our written brief does address a number of issues, but I'm going to focus on two issues that we feel most strongly about, the CAD-7 experience rating system and the general issue of financial and fiscal responsibility. I'll cover CAD-7 first.

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If we had to put it into one sentence and stop there, I'd say CAD-7 has been proven effective and should not be altered, period. In the construction industry, as well as all other groups of industry, the CAD-7 rating system has worked. There's been proven accident reductions, there's been proven cost savings to business, the volume of lost-time claims has dropped by over 50% in recent years, and it's quite difficult to understand how Bill 165 can think of altering such an effective program.

The change that Bill 165 is proposing is a merit rating system, and that is simply unacceptable. The experience rating must remain performance-based, not audit- or

merit-based. The merit base does become punitive in nature, and it fails to offer the incentive to business, and we've seen the benefits that the incentives have provided up till now.

We're also concerned that a merit system will be unfair to smaller businesses, or prejudicial to smaller businesses and smaller companies. Some firms that are small will find it difficult to implement vocational rehabilitation programs. They won't have the resources to do it and compete with the larger companies. Other smaller companies that have a lot of seasonal workers and therefore a high worker turnover will find it quite difficult to compete with larger firms when it comes to the implementation of health and safety programs. These companies will have programs, but on an audit on a merit review they won't be as effective, or won't appear to be as effective, as the larger companies, so these smaller companies may be unfairly penalized even though have an otherwise excellent safety record.

I've heard the argument in recent days from some groups that the CAD-7 rating system simply offers rebates to companies just for following the law. I don't support that, and our members don't support that. Construction safety is not an issue of right or wrong. It's not an issue of following the law or breaking the law. The CAD-7 is a penalty for the bad, and we're totally in favour of that, and it's a well-deserved bonus for companies that have good safety records. So please maintain the existing experience rating system as it now stands.

The second point that we'd like to address today is the issue of financial soundness. I'm sure you've probably heard as much of this as you want to hear, but the single greatest problem facing the WCB, in our minds, is the deficit, the staggering \$11.5-billion unfunded liability, and it's growing by \$2 million a day. It's growing today, right here, at \$2 million. We can't comprehend how Bill 165 basically ignored this immense, staggering problem. I'm at a loss for words. How can Bill 165 just disregard this issue to the extent that it does? Again, I find it difficult to put that into words. It's just beyond belief. In fact, the legislation increases benefits for approximately 40,000 workers and the costs are being increased by \$86 million a year at a time when we know something has got to be done to bring costs down.

The legislation does project future savings, but there are no immediate savings or no immediate cost reductions in the legislation. Any future savings, if they are ever realized, and I think some people may have some concern at whether these future savings will ever be realized, are not enough to even start to bring the unfunded liability under control.

Even with the legislation as it is now proposed, the sustainability of the WCB system is in jeopardy. We believe that the target of a zero unfunded liability must be a fundamental goal of the WCB reform. Without it, we may not have a WCB in the future. In our brief that we've presented to Tannis, and it goes into it in more detail, we've identified some of the tough cost-cutting measures that will have to be addressed to get the unfunded liability under control.

The Friedland formula must be adopted without

exception. We support the formula as it's proposed, but without exception. I do want to stress the "without exception." We support the reduction of worker benefits to 85%; the WCB must decrease administrative costs; and the definition of "workplace injury" must be narrowed to cover injuries caused by workplace accidents and start to pull in what that definition is. As I mentioned, each of these are discussed in more detail in the written brief we've provided.

At the risk of repeating myself, and I'm sure you've heard this over the last number of days, the unfunded liability must be brought under control as a fundamental goal of the WCB reform of Bill 165. The bill must address the financial sustainability of the system and it must require financial and fiscal responsibility not only in the day-to-day operations of the WCB but in an effort to get the \$2-million-a-day deficit under control.

Tied into the whole issue of the WCB's fiscal roles is the issue of competitiveness. Already in Ontario, which has the highest average assessment rates in Canada, businesses are unfairly disadvantaged, and we are in a North American global economy now, and that means something significant. Without some major fiscal reform in the WCB, Ontario will be losing employment opportunities and business opportunities to other provinces and other states. The result will be—and I hazard a guess the result may already be—some lost jobs and lost business opportunities in Ontario. Everyone's going to lose: business, labour. There'll be no winners.

In conclusion, I'll go back to what I said at the beginning, that the changes necessary to Bill 165 in our opinion are so extensive that they cannot be made through amendments at the committee stage prior to third reading. Bill 165 must be withdrawn, and we ask that it be replaced with legislation that better ensures the long-term sustainability of the workers' compensation system.

This belief is shared by our 360 members, and I have with me, and I'll present this to Tannis on my out, a petition signed by many, many of our members. This petition is asking that Bill 165 be withdrawn and I'm providing original copies of the petition to Tannis today.

Those are my comments. We've touched on the two most important issues as we see them, and the written brief we've provided addresses a number of other issues as well. That's all. Brian and I will now be available to answer some questions.

The Vice-Chair: Thank you. Just for your information, that letter you sent to Tannis has been passed out to all the committee members.

Two minutes each.

Mr Carr: Thank you very much for a good presentation. First of all, I want to also welcome my colleague Leo Jordan from Lanark-Renfrew, for those members who don't know Leo. He's joining us on this as well.

Today, I mentioned earlier—I don't know if you were here—in the Report on Business the Globe and Mail had a report on what happened in New Brunswick. As you see there, they're cutting the assessments by 18%. Their rates are now substantially lower than Ontario, \$1.70 per \$100 versus \$3 here. Their unfunded liability, if you look

at it, is much better than ours is.

So the solutions, as I said earlier, aren't that difficult. What they take is political will, and there are other jurisdictions that have done it—Alberta, Manitoba—and I say this goes across all party lines, because, as you know, in New Brunswick it's a Liberal government, Frank McKenna, although many people say he's more conservative than a lot of Conservatives. But there are other areas as well that are doing it.

The plan in New Brunswick I think is something that has been very successful. When you look at it and you see the fact that they are attracting businesses—Federal Express is down there with its telemarketing program—they've done very well in terms of job creation. Would you like to see what happened in New Brunswick, or some of the measures they took, happen here in the province of Ontario, and can it be done that simply, or am I being a little bit too simplistic? Can it be done?

Mr Lee: I'm familiar with the New Brunswick changes on a cursory basis, but I'm familiar with the reductions they've got, and I think it is that simplistic. Keep in mind as well that as Ontario becomes more competitive, if there are more jobs and there are more business opportunities, then the amount of revenue into the WCB will increase as well. If we have a situation where business is being driven out of Ontario, the assessments are going to go down and the rates will have to go up to cover it. So it's a vicious circle. I think we've got to take an immediate step, and if we can promote Ontario and become more competitive, the jobs and the opportunities will be there.

Mr Carr: Thank you very much. Good luck.

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Mr Waters: I guess Mr Carr forgot to read the next paragraph, where it says \$9.49 for each \$100, and this is in the construction industry in New Brunswick, so for a certain portion of construction—

Interjection: Aha.

Mr Waters: The next paragraph says \$9.49.

Interjection.

Mr Waters: Yes, there it is. Read it. The next paragraph, \$9.49, pier construction.

Mr Ferguson: Yes, \$9.49.

The Vice-Chair: Order.

Mr Waters: Amazing. Reads one paragraph, forgot the next. Anyway, I guess I have a couple of questions.

So far the injured workers have contributed into this reworking of WCB \$18 million. That's what injured workers have lost. That's what they've contributed.

I hate to pick on you, but I happen to know that in central Ontario, and indeed I checked with people in Toronto too, the construction industry is plagued by people who take advantage of young people out of school who are labourers and they're all of a sudden subcontractors. They're not paying compensation. These people are in there as subcontractors. They don't realize that they have to be insured. They don't realize that they have to be insured in case somebody gets hurt.

Don't you think that these people being injured and

nobody paying in advance is adding to the unfunded liability? And the fact that employers openly say, "We're going to challenge every case that comes forward. We don't care if a guy loses his arm, his leg. We don't care, we're going to challenge that," doesn't that add to the unfunded liability?

Mr Ferguson: Good question.

Mr Waters: Like, where does it end? And when you talk about redefining accidents, what about the people who work in the plastics and the chemical industries and other industries who have lung diseases or their bodies are full of cancers who aren't getting any compensation? They're getting welfare. Don't you think the employers are responsible for some of that?

Mr Lee: It's a tough point to answer. I'd like to ask Brian to respond—

Interjections.

Mr Lee: I've been saving up for four days. I'll even turn my mike on for him—to the issue of the young people. I think that's the one we're most able to address, perhaps, the issue of young people in construction, and I'd like Brian to address that.

Mr Waters: Well, it happened to my son. That's how I found out about it.

Mr Brian Rowley: The tougher regulations get, I think the more often we'll find people trying to duck them. We passed out through our association a while ago a checklist which determined whether subcontractors were subcontractors or they were actually working for us. It determined who would pay. So we've taken measures to try to determine who is responsible and make sure that people are covered. But the more punitive the fees are, the more people are going to duck them.

Mr Waters: But doesn't that add to your costs?

The Vice-Chair: Thank you. Ms O'Neill.

Mrs O'Neill: Thank you both for coming. I think your comments on the experience rating are very well placed, and certainly the fiscal responsibility; we can't hear it too often.

I have been in the Legislature for going on eight years and I've sat on committees many, many days. The purpose clause and definitions I have never heard questioned on legislation like I have this summer, and I'm not just talking about this one piece of legislation. People are actually beginning to question the purpose of the legislation and the definitions in legislation because in both cases they're very unclear and nebulous, and I'm talking about several bills.

You must have been surprised—and that's what I want you to respond to—when you saw Bill 165. You likely have heard the Premier, and I quote again from his letter of April 21, "A 'purpose clause' will be added to the Workers' Compensation Act which will ensure that the WCB provides its services in a context of fiscal responsibility." The Premier signed his own personal note on that. And then you see Bill 165.

Do you think the royal commission's going to save this situation? What do you feel is going to help, because we don't seem to be able to get the message of fiscal

responsibility. We put people like you out of business or have them avert the law, as has been suggested, because it's so prescriptive. Then how do we solve that?

Mr Lee: I think, very briefly, especially with the social contract and seeing that, even though there were some pretty tough measures, the government was trying to make some commitments to some fiscal control—putting that comment aside—and then looking at the original purpose statement back in, I guess it was, the spring of this year, we were extremely excited, like: "Oh, finally, something's going to be done. This is fantastic."

The purpose statement seemed to be what we wanted to hear and we were quite excited. Then when the legislation came out, we just fell off our chairs. We couldn't believe what we—and the first thing we turned to was the purpose clause and, like, "Hey, what's happened here?" After reading it a few more times and I guess trying to read into the clause a little bit, we were quite shocked.

We're quite pleased to see that there is a purpose clause. There was so much legislation in the past with no purpose clause, so it's nice to see that, but at the same time—even the press release that announced Bill 165 used the term, I believe, "fiscal reform." There is no reform in the bill.

Mrs O'Neill: Is the royal commission going to solve that? Do you think the royal commission's going to bring the point clear?

Mr Lee: I don't know. I'm quite discouraged, to be honest with you.

The Vice-Chair: On behalf of this committee, I'd like to thank the Ottawa-Carleton Home Builders' Association for bringing us their presentation this afternoon.

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 1000A

The Vice-Chair: I'd like to call forward our next presenters from the United Food and Commercial Workers, Local 1000A. Good afternoon and welcome to the committee.

Ms Pearl MacKay: Thank you. My name is Pearl MacKay. I'm executive assistant to the president of UFCW, Local 1000A, and with me today is Sterling Seward who's a staff representative with UFCW, Local 1000A, for the eastern area of Ontario.

On behalf of the United Food and Commercial Workers, Local 1000A, I thank this committee for the opportunity to make this presentation to you regarding our position on Bill 165.

We would like to note at the outset that we support the brief tabled on August 23, 1994, by Brother Tom Kukovica, our Canadian director for UFCW, and the Ontario Federation of Labour presentation submitted by Brother Gord Wilson earlier in London, Ontario.

The UFCW, Local 1000A, is a local union with approximately 12,000 members throughout the province of Ontario. Our members work predominantly in the food retail and food processing industries. Some of the employers we have collective agreements with include Kretschmar, Brandt Meat Packers, Cambridge Canadian Foods, Loblaw's Supermarkets Ltd, Supercentres, Sunny-

brook Foods and Your Independent Grocer.

Many of our members suffer from injuries such as carpal tunnel syndrome, bursitis, frozen shoulder, trigger finger, low back injuries and herniated discs. These injuries are often caused by the repetitive type of work that they perform and often permanent damage has occurred by the time these injuries are diagnosed.

When a worker is ready to return to some type of work, it is often difficult to find accommodations due to the nature of the work. However, it's not impossible. I would like to share with you a real-life example of an injured worker who is a member of Local 1000A and his experiences with the workers' compensation system and why the amendments enshrined in Bill 165 are critical to injured workers in assisting them in returning to their workplace with permanent accommodations.

Previous amendments to the Workers' Compensation Act, via Bill 162, provided for the first time a mandate for employers to return their injured employees to work wherever possible and subject to certain time restrictions. Unfortunately, it did not go far enough and, at best, only a small fraction of injured workers have returned to work with their pre-accident employer. The current legislation does not have enough teeth to ensure employers authentically attempt to return injured workers to work.

Prior to Bill 162, most of the employers we have under collective agreement took the attitude that: "If you're not 100% better, then go home till you are, because we don't have light duties available and we can't accommodate you. If you're not able-bodied, then we don't want you." As a result of this, many injured workers found themselves on the outside looking in after a work-related accident that left them with some permanent disability.

When employers took that approach, some of them did so without understanding the Human Rights Code for the province of Ontario, and we appreciate that in many cases employers needed to have some form of education on what the law of the province required and human rights in general in Canada. There were others that were well aware of what their obligations were via the Human Rights Code and still chose to take this approach. Bill 162, however, I believe, when it came into effect, clearly pointed the direction to employers that there was a responsibility to accommodating injured workers.

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As a result of this, we were forced to look at other alternatives, though, in returning injured workers to work. Prior to Bill 162, we regularly recommended that injured workers who were denied an opportunity to return to work file a complaint with the Human Rights Commission. Unfortunately, the commission has its own problems and delays are such that it could take several years before a resolve is reached.

Those workers injured prior to Bill 162 becoming effective only had recourse before the Human Rights Commission. As a result of the recent Ontario Labour Relations Act amendments, however, under Bill 40, whereby the Ontario Labour Relations Board now has the jurisdiction to take into consideration the provincial Human Rights Code, the grievance procedures in our

collective agreements can now be utilized.

In addition, what we've done is negotiated, in some of our collective agreements, articles that call for accommodation. I'll get to why we put so much emphasis on accommodation near the end of my presentation.

This leads me then to the injured worker's history that I'd like to share with you today. He immigrated to Canada from Turkey in 1975 and began working with the accident employer in 1976. He injured his lower back in August 1988 when he slipped lifting a 20-pound barrel.

He was off work approximately three months and returned to the accident employer in December 1988 to accommodated duties with restrictions in bending and lifting and a gradual progression to full hours. In April 1990, he was required to perform lifting and bending duties beyond his restrictions with the result that he was ordered off work by his doctor in April 1990.

In June or July—we're trying to make that determination—1991 he was deemed by the Workers' Compensation Board to be partially disabled and therefore he was capable of doing some kind of work, and the restrictions are listed.

A meeting was held with the WCB case worker and the employer. The union attended as the worker's representative and presented the case before the employer to have the worker come back to work on accommodated duties. The company did appear compassionate. However, the end result, after much deliberation, was that they decided they could not accommodate this worker on a permanent basis, despite the fact that the worker, the WCB case worker and the union had identified several jobs in the workplace we believed the worker could do and should at least be given an opportunity to try.

This decision was formalized by the company in May 1992, and the reason cited, which is interesting, for why they were not prepared to provide the accommodation is that for them there was no real financial incentive to take this worker back as his claim was what they called a pre-NEER file, and they were not obligated as well under Bill 162.

The union representative tried to reason with the accident employer, without success, and on August 12, 1992, we filed a grievance on the injured worker's behalf. In addition, we also advised the worker to file a complaint before the Human Rights Commission. He did so in June 1993. What took the delay in him actually filing a complaint with the Human Rights Commission was that he did not want to upset his employer. He felt that if he filed a complaint with the Human Rights Commission, he would only be upsetting the employer. We had to explain to him that basically the employer had fired him because they weren't prepared to take him back to work, when we believed that there was work he could do.

Meanwhile, the WCB case worker was working with this worker, and the union representative as well was involved, to provide the worker with vocational rehabilitation, as we know. The downside of not being accommodated by the accident employer is you then have to go on this long pathway of vocational rehabilitation assistance. At the end of the day, that may or may not be successful

and we found that in a lot of cases there isn't a great number of successful cases that talk about people actually finding work.

However, back to this worker, he was sent to vocational pathways for a 10-day assessment of testing his skill levels. This ended in June 1992. He was provided with a six-month English-as-a-second-language program and at the end of this he was enrolled in a MIG and TIG welding program for an eight-week trial basis to see if he could perform the work within his restrictions that were required by the course.

Unfortunately, he had a recurrence during this time and that program had to be stopped. He was then enrolled in a 20-week industrial building maintenance program with LIUNA, Local 183 training centre, and in January 1993 he successfully completed this program. It's interesting to note here that actually it's a 16-week program but, because of his restrictions—and what's not often taken into account, sometimes the workers can't cope with the full day's work involved in a training program and sometimes that period does need to be extended. In this worker's case, it did need to be extended by four weeks, but he was able to complete the program. During this time, as well, he was assessed for a permanent disability award by the board and was granted a 15% pension.

Back at the arbitration—because, remember, we filed a grievance—we've now finally in December 1993 gotten to an arbitration board. However, the arbitration started, but it didn't get completed. On that day the arbitrator discussed with the accident employer in a private conversation in the hall—and whatever took place in that conversation I don't know, but the result of that conversation was that the accident employer decided that perhaps they could accommodate this injured worker. So the panel remains seized so that we could try and work things out again.

It should've been a simple return to work at this point, but the company insisted on the worker now going through a second functional abilities evaluation to see what level he was operating at. We agreed to this, simply to not waste any further time, to go back to an appeal process.

The second evaluation was done in the late spring of 1994 and, when the result came in, the company and the union, with the assistance of the WCB, matched up the injured worker's restrictions and precautions with an appropriate job at the workplace. As it turns out, the company was able to accommodate the worker in his pre-accident job. He was placed on a work trial with progressive increases in hours and was provided with accommodation within his restrictions and, at the end of July 1994, finally went off WCB benefits. He has now returned to this pre-accident job accommodated.

This story at least has a somewhat happy ending in that this now 49-year-old worker is employed within his restrictions with comparable pre-accident earnings. He still suffers 24 hours a day, day in and day out, as a result of his work accident. This he has managed to cope with, and we can tell you that the road for him to return to work would've been more worker-friendly had the amendments outlined in Bill 165 been in place to encour-

age the employer to return him to work without frustrating our attempts. Had this worker not had a union supporting him, it is unlikely that he would be employed with his accident employer today.

The single most effective way to reduce WCB costs that we are aware of is to reduce the accidents. In the event, however, that there is an accident, the employer, through the joint return-to-work committee, should provide authentic appropriate accommodated work. This will clearly reduce the duration of claims and as you are aware will impact on rebates to which the employers could be entitled.

I sat on the PLMAC secretariat, which was the group that worked below the PLMAC, to try and find cost-saving measures in the system that was what was coined a win-win situation, and the single most effective factor we could find that would reduce costs to the WCB system and would assist injured workers was early return-to-work programs where you have joint return-to-work committees in place to get injured workers off benefits so that you shorten the duration, and that's crucial. When you look at assessment rates and what they're based on, duration is one of the factors so, if you can reduce the duration of the claim, you're definitely going to see a saving for the employers through their rebates.

The other side of that is the benefit to the injured worker, that he will be back to work more financially secure and feel much more comfortable. A lot of workers when they get injured are at the weakest they'll ever be in their lives. They don't know what's going to happen tomorrow; they don't know if their accident employer is going to be able to take them back or accommodate them, and that's why we support the Bill 165 amendments that clearly enshrine further what Bill 162 started to do. Bill 165 carries further to enshrine workers returning to work.

What should've been for this worker a 16- to 17-month period of time off on a recurrence stretched out to a duration of 39 to 40 months. That's over three years. This worker received full benefits during that time from the compensation board. He participated in retraining and assessment programs costing several thousand dollars. The one at LIUNA—the tuition fees alone for that were \$4,600.

In addition to the financial cost of a claim like this one, there are many hidden costs on the injured worker and his family in the uncertainty of future job prospects and the lack of financial stability. In this worker's case, he did not have a family outside of his young daughter to look to for support through this very difficult period in his life.

Bill 165, although it will not help this worker regarding his last accident, will protect his rights should he have a future work accident.

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Subsection 54(11.1) of the amendments will assist injured workers as the board will be empowered on its own initiative to determine whether the employer has fulfilled its obligation to the worker. This subsection enables the board to be proactive in assessing penalties on employers who do not fulfil their obligation to re-

employ an injured worker. This subsection will be especially important for workers in that it should create some incentive for accident employers to return injured workers to work.

The benefit in this is the incentive that it creates. If we can at least get employers to start to look in a different angle and have them look at this, "I could be fined or penalized in some way if I don't," then at least we can get them to start thinking in those terms, that there's an incentive here to do it. Once you then start down the road to accommodation, you'll actually find the accommodations are not that difficult. It's turning that corner, to get the employer to look at that, so a worker who may have some permanent partial disability can still be a fully productive worker for them.

In addition, I'm pleased to say that this particular injured worker will not be needing the \$200 a month, for example, that is enshrined in Bill 165, as it is today, because he's back to work. Unfortunately, his story is the exception, rather than the rule. We consider this a much-welcomed increase and support the amendment for injured workers who are less fortunate.

As time does not permit, I will leave you with some anonymized injured worker profiles that I hope will help you to put a human face to these hearings that are being held throughout the province regarding the bill. In closing, I would like to note that joint return-to-work committees are essential in getting injured workers back to work, accommodated or otherwise. Local 1000A has had a somewhat similar structure in place with most of our employers since 1990 and have seen the benefit of such a committee in assisting injured workers to return to work. But I caution you that the committees must have training. You just can't strike a committee and say, "Here, you're responsible for accommodating injured workers." The committee needs to be trained on what is accommodation and how to go about that.

In addition, there has to be the will; there has to be the will from both workplace parties to authentically look at appropriate accommodations. When I get to the will, what I'll tell you is that I cochair, for labour, a committee struck by the Workers' Compensation Board called the vocational rehabilitation advisory committee. We had a meeting that was set yesterday and we were advised that the four employer representatives were directed—and I quote the word "directed"—not to attend that meeting. We were very disappointed.

Our last meeting was held in April of this year. The committee was struck by the compensation board last September. We had been making some good headway in working out some common areas of interest and had just set an agenda in place in April of issues we were going to look at as they relate to injured workers' return to work. We were asked at our meeting yesterday—that's the reason I understand the employer people were directed not to attend—by the compensation board to review a Ministry of Labour document on new directions on return to work and to present our opinions to the board.

The VRAC employer side took the position that this was not within the mandate of the VRAC. We disagree

with that; it's exactly what the VRAC was struck to do, to provide recommendations. We don't set policy, but we do certainly make recommendations, or that's our mandate.

When I talk about will, I need to talk about—there's a way to improve the WCB system and the way of doing that right now, especially in the short term, is to get these joint return-to-work committees in place, but unless you have the will from the employer side to participate in that—and the labour side, the worker side, to participate in those initiatives, it's not going to work. What you can enshrine in legislation may not end up meaning anything if the will isn't there to carry it forward. I think it's important that it get enshrined. It's unfortunate it had to come that we need to see legislative amendments to have sort of an attitudinal approach in our workplace, but that's the way it is.

The other thing I've included for you is some sample accommodations.

The Vice-Chair: Just two minutes left.

Ms MacKay: Oh, I'm sorry—some sample accommodations that we've been successful with, with our workers, that I hope you'll take the time to read to show that it is possible. A couple of these workers have been at work for over two years now and accommodated and fully productive workers.

The Vice-Chair: If all caucuses could share the two minutes. Ms Murdock.

Ms Murdock: Actually, that's sterling, Pearl. I couldn't say it any better and I'm not going to ask a single, solitary question, because I think what you've said says it all.

Mr Ferguson: Well done.

Mr Offer: I must agree. I think that by agreeing with what Mr Kukovica and Mr Wilson said at earlier meetings says it all.

Interjections.

The Vice-Chair: Order.

Mr David Johnson: I don't know if I should be the voice of discord, but I will agree to the extent that you've been a very eloquent speaker in terms of injured employees and you bring a point of view and you bring reality. The case you've brought forward, I'm sure, is a real one and there's a great deal of merit in what you're saying.

But at the same time, I've been on the other side of the fence, as an employer in a sense, being in a position as the mayor of a municipality and being on the hydro commission. I know that we have had injured workers who we've had to try to accommodate back in the workforce and I don't sense a level of understanding or sympathy on behalf of the employer, because it is difficult.

I know that, for example, in the municipality that I represented, we didn't have spare positions, we didn't have open positions. The taxpayers were beating up on me every year because of tax increases. Senior citizens were calling me saying they couldn't afford the taxes. They live in their little house, but they either have no pension or very—

The Acting Chair (Mr Daniel Waters): Mr Johnson, if I might, the two minutes was for all caucuses.

Mr David Johnson: Yes, but I had a minute and a half left. You just don't like what I'm saying, that's all.

Ms MacKay: I hope I'll have time to respond.

Mr David Johnson: The business community in Metropolitan Toronto is saying the number one problem in making businesses competitive would be the property tax. A good chunk of the property tax is to pay people, so it's not easy to find a position when you don't have them there. Yes, you can create an extra position—

The Acting Chair: I'd hate to turn the light off on your mike, Mr Johnson, so please.

Mr David Johnson: I just ask for a little sympathy for the employer too. It's very difficult.

Ms MacKay: Actually, what may be missing here, with respect, is that accommodation is not about creating work, it's not about finding a spare position. It's about taking the pre-accident job and looking to see if it can be modified in some way, whether the worker is provided with tools to help the person do that job, or it may be a change in hours to reflect a certain way the work process takes place, or as simple as—and you'll see it in the document that I've attached—a \$250 chair so that a cashier can go back to work because she's got a low back injury and all she needed was a \$250 chair to have her accommodated. Quite frankly, what it would have cost the compensation board and the employer in the end in terms of training her to do something else would have been far greater.

The Acting Chair: Thank you, Ms MacKay, and thank you, Mr Seward, for a most enlightening presentation.

QUINTE AND DISTRICT INJURED WORKERS

The Acting Chair: I would at this time ask the Quinte and District Injured Workers group to come forward. If you could introduce yourself for the purposes of Hansard and for the members and if you could leave enough time at the end for some interaction, it would be appreciated.

Ms Dorothy Ellis: I'm Dorothy Ellis and I'm the past president of the Quinte and District Injured Workers. Somewhere on some of the paper that you may have received, it may say Belleville. That's home.

I take great pleasure in being able to present to this illustrious group today. I'm sincere in that. For that, I'd like to thank the Chairperson.

I want to speak about two specific concerns; namely, one is the erosion of indexation through the Friedland formula and number two is to make provision in Bill 165 to amend the Workers' Compensation Act, and the Occupational Health and Safety Act if necessary, to provide spousal survivor benefits to those workers who are injured and became disabled and unemployable prior to Bill 162 in 1990.

I have been directly associated with the Quinte and District Injured Workers group for the past eight years. During this time I have observed injured workers experiencing varying degrees of physical, organic-type loss, as

well as emotional trauma caused by both the injury and the loss of self-respect in not being able to return to their pre-accident employment and earnings. In many cases there is no suitable job, which creates another whole kettle of fish that we'll not get into because I only want to deal with the two concerns, and I think you've already heard those.

1440

I will attempt to voice my concerns and opposition through a very concise approach.

Concern number one, erosion of indexation: The right to full indexation was won by labour as recently as 1985. Now, in 1994, under what was once perceived as a supportive labour party, the NDP government wants to take money away from workers through the Friedland formula to provide assistance to some, and a very few, a selected group of workers, injured pre-1990.

It is imperative that every worker injured pre-1990 receive the \$200 increase that was proposed in Bill 165 to simply help bring them closer to the poverty line. It is my expectation that the NDP government bring in the best possible legislation to place injured workers in an improved position.

It is intolerable to think that any government, regardless of who they might be, would consider tampering with the rights of injured workers to full indexation, CPI, while at the same time give millions of dollars to large corporations, which I believe to a large extent helped to create the huge deficit that hangs over us. I find it disgusting to think that people targeted for cutbacks are those already living under the poverty line through no fault of their own.

These injured workers were contributing members of society. They contributed significantly while they were able to work to the economy of this province prior to their accidents and/or injuries, and certainly would still like to. I ask you, have they not suffered enough?

The pensions of the pre-1990 injured worker must continue to receive full indexation if they are to survive at all. Folks, I am talking about the right to survive. I'm not talking about the reduction of an already luxurious type of lifestyle.

Concern number two is the spouses and families, especially the spouses, who survive the injured worker. Presently, there are no provisions under the act to provide a survivor pension to the spouse of a worker who was injured pre-1990. In many cases the family lives off the pension because that is their only income. It's in lieu of salary received by the injured worker, as that person was the sole support of the family. If the injured worker becomes deceased, then under the present system the family is destitute, with the exception of a partial Canada Pension income.

In a recent survey of 157 workers in the Quinte region of those injured pre-1990, only 11% of the spouses were holding positions which enabled them to contribute to any type of pension plan. Therefore, if the pension or the income of the injured worker terminates with the death of that person, then 89% of their families would be placed in financial jeopardy.

The financial loss suffered by the injured worker takes its toll in a variety of ways, and for the purpose of illustration I have provided a case study which I, time permitting, would like to talk to you about. The possibility of an injured worker being able to contribute to any type of investment plan, ie RRSP, any other kind of a personal, private plan, is remote since the organic pension is already far less than the earned income.

I believe the NDP government must amend the act to provide a survivor benefit of at least 50%, equivalent to that of the Canada Pension, to those victims of injury prior to Bill 162, ie, 1990. My inquiries to all three political parties have lead me to the same conclusion: I believe that this is the only pension paid by the provincial government that does not already provide some type of survivor clause.

So the recommendations to this group are (1) as the concerns that I outlined stated, the right to full indexation won by labour in 1985 must not change, and (2) to make provisions under Bill 165 to amend the Workers' Compensation Act to provide a minimum survivor pension of 50%.

I would like to just go through briefly the case study that I have provided for you, because I believe it addresses clearly both of my concerns.

The client in this case is a construction worker who travels extensively from one job site to another. The spouse in this case, being a wife, doesn't work outside of the home because of a young family. The client injures his back severely in 1974, but is able to return to his pre-accident job after extensive therapy and rehabilitation provided very succinctly by WCB.

In 1979, the client receives further injuries to his back, and again after extensive therapy and rehabilitation is able to return to work. Remember, of course, that this client is a construction worker.

In early 1986, this client was working and earning an hourly rate of \$20.46 per hour, contributing significantly to the economy. Hotel accommodations and meal allowances were paid by the company. In addition, 80 cents per hour was being paid by the company for a comprehensive family benefit plan.

By March of that same year, 1986, at the age of 49, the client could no longer tolerate his back condition. After soliciting the opinions of three well-renowned orthopaedic surgeons to make sure of what had to be done, who shared the same opinions and prognoses, the client was faced with back and hip surgery that rendered him totally disabled as far as his pre-accident job was concerned.

This client had a double problem. He was a welder by trade and lacked formal academic education. He had initially chosen a skilled trade because he was born with a handicap, a learning disorder known as dyslexia. That was the reason he had to choose a trade of this nature. It's the only way he could earn a living. The dyslexia is so severe that spelling is impossible and reading is very slow and uncertain. To provide vocational rehab in a meaningful way for this client was virtually impossible. Note that I said "in a meaningful way."

An organic pension was eventually established at 60% of the salary he was receiving at the time of the initial accident, which was 12 years prior. So without indexation, the pension that he would have received in 1986 would have been so minimal that he could never have survived. As you can see, there was a significant loss of income, as well as the loss of the 80 cents per hour, and the 80 cents an hour was only greatly missed because of the benefit it provided.

I have provided you with a brief overview. There are pages of details in between that won't help or hinder you in seeing the picture, so I've not included those. The social and emotional trauma is the same as in every other case you would have heard, I'm sure, but I do believe this illustrates the need for indexation and for some kind of survivor pension for the spouse who remains.

I'd be glad to entertain any questions or concerns. It's as concise as I could present, because I know time is of the essence.

1450

Mr Offer: Thank you for your presentation. I think the points you make are extremely important. I want to, if I can, deal with the case study, especially the line that says, "To provide vocational rehabilitation in a meaningful way for this client was virtually impossible."

It just so happens that I think the last submission we heard yesterday, and we were in Sault Ste Marie yesterday, was from educators who were involved in providing vocational rehab to injured workers who, for instance, had a learning disability. The point they made, and I'd like to get your thoughts on this, was that vocational rehab is possible and it can be done. I think they were saying "meaningfully," but they can't be confined to the time limits that are prescribed under the act itself. In certain circumstances there must be a flexibility to deal with, for instance, injured workers, giving them vocational rehab if they happen to have learning disorders.

But your point would be exactly right if you still had the same time constraints. They said you just couldn't do it, and I think you might have been even a bit charitable by saying it just wouldn't be meaningful. It would be a waste. You just have to give the people who give that type of assistance the proper time frames and time lines. I am wondering if you might be able to comment on that.

Ms Ellis: Yes, I would love to. I am an educator, and I might add that I taught high school students with learning disabilities for 25 years. I do agree there's a place in society for them. They do need time. They all have a useful purpose to serve. You'll note that I said "in this case." A 49-year-old who has been trying, who has been tutored privately when he was earning an income, went to private institutions to see if there were any breakthroughs in dyslexia that would enable him to improve his academic ability. So that is why I said "in this case."

Mr Offer: I appreciate that, because I think the message is clear that for people who can provide that assistance, such as yourself and others, such as the people we heard yesterday, the best way to do that is to allow you to do it, but within a realistic time frame.

Ms Ellis: Time frame, yes, for sure.

Mr Carr: Thank you very much for an excellent presentation. You did a terrific job. As you know, there have been some discussions about the financial stability of the unfunded liability.

Ms Ellis: Yes.

Mr Carr: And we can disagree on how bad it is, on various sides. The parliamentary assistant doesn't think it's so bad and so on. But when you look at it, it's not the employers who are responsible if the system doesn't have enough money to pay for it; it's the injured workers who are owed the money. As we saw through the social contract, when there's no money, it doesn't matter what the government is. They never thought they'd roll back wages and open up contracts. When the money ran out, they had to do it.

As a representative of the injured workers, are they concerned about the viability, since it's they who, if the system does, God forbid, collapse, will be getting absolutely nothing as a result if we don't do something?

Ms Ellis: Yes.

Mr Carr: Are they concerned?

Ms Ellis: Very concerned.

Mr Carr: How shall we deal with that?

Ms Ellis: I can't quote statistics on this and I should have done my homework better, I'm sure, before I came. I don't know what it will cost a company, a private organization, a corporation, in insurance to provide independently through an insurance company the same type of benefit that they receive from the workers' compensation. I don't believe that companies could afford to provide what is provided by the Workers' Compensation Board, through the government, independently.

Now, I don't, as I say, have statistics on that. I did work for an insurance company many years ago and I know the cost was phenomenal at that time, but workers' compensation wasn't as well used then as it is now. I think the whole picture of our social net has to change, but until that happens, I think it would be very neglectful of us to penalize the people who are already hurting the most to save a system from collapse.

Mr Carr: As you know, there are some people, some groups that looked at the insurance situation that say universal coverage, not at work but 24 hours a day, seven days a week, can do it cheaper than what you're getting through the WCB.

Ms Ellis: I'd like to see that first. I'm sure the insurance companies—

Mr Ferguson: You and I both, I think, would like to see that, and I certainly appreciate your presentation this afternoon.

I'd like to ask you one question. The government has received a whole lot of suggestions on how we can improve this bill, and as opposition parties are wont to do from time to time—I'll give you these examples—the Liberals have told us that instead of giving a \$200 increase across the board, what we ought to be doing is looking at these increases on a case-by-case basis; rather than a flat increase right across the board, making a

judgement on a case-by-case basis. The Conservatives, on the other hand, have suggested that what the government ought to be doing is taking the 90% of net paid benefit level down to 80%; and not only that, saying to the injured worker we ought to put a 72-hour moratorium in place from the time the accident occurs to the time the benefit is payable prior to anyone being eligible for benefits.

Those are suggestions that we're looking at. I would hope that we don't look at them all that long.

Ms Ellis: I'd hope not.

Mr Ferguson: But I'm wondering what effect that would have on the Quinte and District Injured Workers and particularly your membership. What effect would that have on your members?

Ms Ellis: To answer that simply, I would hope that the 46,000 people in Belleville would be behind me as we drove on the 401 to Queen's Park.

Mr Ferguson: Thank you.

Ms Ellis: I guess if I had one plea I could make to you, it is that for 35 years, as I tried to develop the minds of the young people in the areas in which I taught, there was one lesson I always tried to impart: If we don't care for each other, who is going to care for us? I'd like to leave you with that as well.

The Vice-Chair: On behalf of the committee I'd like to thank the Quinte and District Injured Workers group for its presentation to this committee this afternoon.

INTERNATIONAL UNION
OF OPERATING ENGINEERS, LOCAL 793

The Vice-Chair: I call our next presenters from the International Union of Operating Engineers, Local 793. Good afternoon and welcome to the committee. Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd leave a little bit of time for questions and comments. Please identify yourself for the record and then proceed.

Mr Rick Kerr: My name's Rick Kerr. I'm a business representative with the International Union of Operating Engineers, which represents approximately 10,000 people across Ontario. I service and look after the eastern Ontario region.

The majority of the union's membership is engaged in the operation, repair and maintenance of cranes, shovels, bulldozers and similar heavy construction equipment. Local 793 also represents employees across the entire employment spectrum, including the employees of municipalities, scrapyards, industrial cleaning contractors and waste disposal companies.

On an industry-wide basis, construction is Ontario's second-largest employer of workers, next only to the retail trade industry. Based on 1991 Canada census data, 658,000 workers make their living from construction in the province. This includes tradespeople, engineers, architects, suppliers etc. This works out to approximately one out of every eight Ontario workers. Also, in 1993 almost \$33 billion of construction work was performed in Ontario. This was more than any other province and made up more than one third of all construction work purchased in Canada. Without a doubt, many Ontario

workers derive their employment either directly or indirectly from construction. Consequently, the effect of Bill 165 on the industry will be significant.

In order for this committee to fully appreciate the impact of the proposed changes on our members and other construction workers in the province, it is necessary to sketch briefly the unique characteristics of our industry and how it differs from the industrial sector. We believe this is particularly important, especially in view of the fact that construction industry representatives were not part of the original negotiations which eventually formed the basis of Bill 165.

In 1962, the Royal Commission on Labour-Management Relations in the Construction Industry (Ontario) identified three ways in which construction differed fundamentally from manufacturing:

- The construction industry was subject to seasonal and cyclical fluctuations in the economy.

- The workforce was characterized by mobility, flexibility and the specialized ability to perform construction industry tasks.

- The products generated by the construction industry were not easily transformed from place to place, that typically workers moved from job sites to job sites. In the manufacturing industry, the location of the work does not change and it is the product that moves.

1500

These characteristics remain as true today as they were 32 years ago.

With this framework in mind, I would like to begin my presentation by applauding the provincial government in recognizing that the workers' compensation system is one in need of a major overhaul. Bill 165 I feel captures the main areas of consensus reached by the Premier's Labour-Management Advisory Committee. More importantly, it makes a good attempt at balancing the Workers' Compensation Board's twin challenges: maintaining costs and making the system fairer to injured workers.

In terms of achieving real fairness in the system, I particularly favour the purpose clause, section 0.1, as it will be of benefit to our members in dealing with the board at all levels. This clause finally addresses what many of our injured members have been denied years: that is, reasonable compensation and equal access to rehabilitation services. Having this purpose enshrined in the legislation itself will give injured construction workers some leverage in their claims and the confidence that fair treatment lies at the heart of the board's mandate.

The bipartite board, sections 56, 59, 60 and 66, is an amendment which also pleases Local 793 in its attempt to placate both labour and management by giving each an equal voice in determining the Workers' Compensation Board policies. The bipartite structure is commonly used in our industry with great success—health and safety committees, grievance arbitration boards and many government tribunals such as the Ontario Labour Relations Board. In fact, the trustees of Local 793's pension and benefit plans and training trust funds are jointly represented by the union and our contractors. With the

bipartite board, both labour and management will be on an equal footing to make the system more effective and responsive.

Since we live in a dollars-and-cents world, I would like to discuss what for us is perhaps the most important amendment for our members. Subsection 147(14) allows the additional \$200 a month to injured workers on pensions who are in receipt of the equivalent to the old age security. We feel that this is an issue of primary concern for the members of Local 793. To understand why this particular change is so important, the committee must appreciate the incredible injustice that the system put upon our permanently disabled members who were injured prior to 1990. Through no fault of their own, these members have been financially devastated simply because they worked in construction.

Why? This goes back to the unique characteristics of our industry, as I noted earlier. When those characteristics are combined with the fact that our members are paid relatively high wages to perform specialized and strenuous work, yet have few transferable skills, the end result has the effect of automatically denying them access to rehabilitation services because, according to the Workers' Compensation Board, they could not approximate their pre-injury earnings if the Workers' Compensation Board were to offer training.

In other words, when the Workers' Compensation Board deemed that our injured members could only earn \$9 per hour as parts assemblers and that this didn't come close to their previous wages, they were consistently cut off the system with no help. Instead, they were simply given a subsection 147(4) supplement, presently \$387.74 per month, and a small pension, nothing else.

Clearly, the system failed them terribly. These members can no longer work at their trade because of the permanent injuries, have many families to support and, like all of us, have bills to pay, yet the Workers' Compensation Board closed the door shut on them. I ask you, where is the fairness in this?

The \$200-a-month pension increase is in Bill 165 to right this past wrong. In no way will this rectify what the system has put them through, but at least it will provide some financial relief and give hope to their standard of living.

The next point I'd like to address is the Friedland formula. This is another aspect of Bill 165 that will dramatically affect the income of our members. Subsection 148(1) deals with the de-indexing of pensions to 75% of the consumer price index minus 1% with a cap of 4%. This is problematic in several ways.

First, most of us will collect our pensions from work at the age of 65. When we retire, we only have approximately 20 more years to live. What about the workers who were 40, 30 or 20 when they were awarded a pension? To de-index permanently disabled workers to a lifetime of increasing poverty is anything but fair compensation.

Second, to put a limit of 4% indexing is frightfully unjust. This low percentage will continue to penalize further in times of high inflation. As the cost of living

rises, injured construction workers will be caught in a downward spiral year after year. This aspect of our amendment is most certainly not in keeping with the purpose of the act as outlined in section 0.1.

However, we are well aware that the Workers' Compensation Board is struggling financially and changes must be made to get it back on its feet. Cutting benefits by implementing the Friedland formula is not the answer. Pure and simple, this approach would be reforming the system on the backs of those who need help the most: injured workers.

In our view, the answer lies in strengthening those sections in the act that address prevention and re-employment. Preventing accidents must be the number one priority. Only when total accident frequencies begin to decline and those who are injured get re-employed by their employers more quickly will you achieve a true balance between fair compensation and fiscal responsibility.

In short, we agree with certain aspects of the legislation and I have outlined those for you. However, there are amendments of a more technical nature which cause us more concern. These are the experience rating, the concept of jurisdictional compensation, the absence of union representation in the vocational rehabilitation process and the fact that re-employment obligations of the employers have not been strengthened for the construction industry. How can we attempt to lower the unemployment rate of injured workers which currently stands at 40%?

Further, in our view, several other problem issues need to be addressed in the proposed legislation. The deeming provision as it applies to the future economic loss serves only to further reduce incomes of workers who have not returned to phantom jobs and continues to be a punitive measure which hurts more injured construction workers than it benefits.

With regard to experience rating, there need to be stronger provisions which penalize employers who fail to fulfil their obligations to re-employ injured workers fully. In fact, employers who encourage their employees to collect private disability insurance and not file Workers' Compensation Board claims are doing so at an alarming rate. Many employers are exploiting loopholes in the legislation to avoid higher assessments and rely on the board's slow administration process and action to levy penalties.

The current funding ratios of 37% would be better addressed if these employers paid their fair share. Section 103.1 of the proposed changes is a move in the right direction in terms of closing existing loopholes. Strict enforcement of the experience and merit rating programs, however, will be crucial if the programs are to be truly effective. I trust these matters will be the focus of the royal commission and I look forward to discussing them in the future so that labour, management, and government can work together in developing a fair compensation system, one which more accurately reflects the needs of the construction industry and our society as a whole. We have attached an appendix which details our position concerning these and other changes contained in Bill 165.

Thank you for this opportunity to present the view of our members and the leadership of Local 793. Unfortunately, because of last-minute notice received about today's hearing, Mr Ken Lew from our legal department, who represents our members at the WCB, was not available to be here today to answer any technical questions. None the less, I look forward to responding to any general questions you may have.

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Mr David Johnson: Thank you very much for the deputation. I was just thinking about page 6, towards the end, where you indicate that, "Many employers are exploiting loopholes in the legislation to avoid higher assessments" and the "slow administrative process," I guess.

I don't know to what extent that's true, but from deputations I've heard, it's occurring. What's also occurring is that taxpayers are avoiding paying taxes. There's a huge underground economy. The question is, why are people doing this? The answer is, because they're being taxed out of existence. They can't afford it.

Businesses, particularly small businesses, I guess, are in many cases just hanging on by their fingernails. Any tax, such as workers' compensation and the payroll tax, for example, in some cases would push them right over the edge. Then not only do they go out of existence, but all of those people who are working for them are unemployed. That's the problem and that's the rationale we're hearing time and time again with regard to payroll taxes, with regard to the tax system in general. That's why this has occurred.

I wonder if that's the kind of message you've been getting, and if it is, don't you have some—don't get me wrong. I'm not condoning it, but it's a fact of life and businesses are trying every way they can just to stay in business and to employ people.

Mr Kerr: We see it existing here in the Ottawa area and in eastern Ontario. Perhaps an example is a member who receives an injury, is called in to answer the phone for a week or two—you know, maybe at that time it's not recognized as a major injury and later on it is—and usually he's not back employed with the contractor.

Mr David Johnson: But I guess my question is, don't you recognize that maybe employers are not avoiding taxes and finding the loopholes in WC for some machiavellian purpose? It's because if they don't take advantage of every situation, they're gone. They're not competitive. In Ontario we're just taxing everybody out of existence.

Mr Kerr: My only problem with that is, I would hope that if they're avoiding that, they're not also avoiding spending money on safety precautions within their companies.

Mr Fletcher: Thank you for your presentation. I'm particularly interested in this part about how much in 1993—" \$33 billion of construction work was performed in Ontario," a third more than any other province, or whatever, construction in Canada, which is great. I think Jobs Ontario Capital has a lot to do with that and I'm very pleased to be part of a government that introduced that program.

You do have some concerns. The Conservatives have been advocating that we should perhaps follow what New Brunswick is doing. Let me just ask you simply this as directly as possible: Should we be cutting benefits to injured workers to 80% of net pay for the first 39 weeks—

Interjection: Hammer the workers.

Mr Fletcher: —for workers who are off the job for 40 weeks it goes to 85%, it limits stress claims and the three days which they've also been advocating, there's a 72-hour grace period where you can't file a claim.

Interjection: Mike the Knife.

Mr Fletcher: Are these things that we look at when we look at a fair compensation system?

Mr Kerr: Definitely not.

Mr Fletcher: Thank you.

Mr Waters: Let's go back and talk about funding. I always have a problem where I go back—to me, what compensation was meant to do was indeed stop it so that employees could no longer sue their employer, to save their employer dollars. Right?

Mr Kerr: Yes.

Mr Waters: Therefore, the employer was to compensate employees for their loss of wages. What happens when an employee—and we've just gone through a very tough time, a recession where people have been earning at a lot lower level than they traditionally would have. Now we're going back in the other swing and business is coming up. These people will never be compensated at the rate at which they would normally be working. Like students who lose an arm at age 15 in a corner store and their compensation for life is based on a minimum wage: Do you think that's fair?

Mr Kerr: No, I don't. We see the struggles here in Ottawa of our members on WCB.

Mr Waters: Then who should pay: the injured worker, society through the welfare program, or the employer who bought into compensation?

Mr Kerr: Maybe what we should be looking at is savings through prevention and education.

Mr Waters: You're absolutely right.

The Vice-Chair: Thank you very much. Mr Offer.

Mr Offer: You've acknowledged that the board is "struggling financially"—you say this—"and changes must be made to get the board back on its feet." The reason I bring that out is that it may sound strange but there's been a whole discussion around whether this thing called the unfunded liability is something that one should be concerned about or not concerned about. There are others who say, "Well, it's just something out in the future that isn't a real debt." I take it from your statement on page 5 that it is something that one really should be aware of and concerned with?

Mr Kerr: That's correct, yes.

Mr Offer: And I take it further that in dealing with this, you should not deal with that debt on the backs of the injured workers?

Mr Kerr: Correct.

Mr Offer: And I take it, further, that you feel that the implementation of the Friedland formula does in fact that?

Mr Kerr: Correct.

Mr Offer: And I take it that you would be opposed to the bill because it contains the Friedland formula?

Mr Kerr: I'm not opposed to the whole bill as it's written.

Mr Offer: I take it that you were opposed in an earlier bill to deeming, to the deeming provision? I think you mentioned that.

Mr Kerr: Yes.

Mr Offer: Do you view the implementation of the Friedland formula as in some strange way deeming injured workers to a pension that is not going to keep up with the potential inflation rate in the province?

Mr Kerr: Yes.

Mr Offer: And you're still in favour of the bill?

Mr Kerr: No, I didn't say I was in favour of the bill. I said we're in favour of certain aspects of the bill. We're not in favour of other aspects of the bill. I didn't say we support the bill.

Mr Offer: Thank you.

Mr Kerr: Maybe you misquoted me, but—

Mr Offer: No, I appreciate that.

Mr Kerr: There are portions that we are in favour of in Bill 165.

Mr Offer: Thank you.

The Vice-Chair: On behalf of this committee, I thank the International Union of Operating Engineers, Local 793, for their presentation to the committee.

1520

OTTAWA CONSTRUCTION ASSOCIATION

The Vice-Chair: I call our next presenters, from the Ottawa Construction Association. Good afternoon and welcome to the committee.

Mr Dan Greco: Thank you, Mr Chairman, members of the committee. I'm Dan Greco, the director of labour relations for the Ottawa Construction Association.

The Ottawa Construction Association represents the interests of approximately 900 construction and construction-related firms in the Ottawa area. We are a member organization of the Council of Ontario Construction Associations, also known as COCA, representatives of which appeared before this committee on August 25 in Toronto. We fully support the submissions made by COCA with regard to Bill 165.

Today we wish to emphasize two particular aspects which are of concern to our members as employers in the construction industry: experience rating for the construction industry and financial accountability of our workers' compensation system.

Turning first to experience rating, construction industry employers generally share a common dissatisfaction with Ontario's workers' compensation system as it exists today, with the exception of one aspect of the system. The CAD-7 experience rating program for the construction industry is seen as the one positive element of the

WCB scheme. More important than being popular with employers is the fact that CAD-7 works. Since CAD-7 became fully implemented in the construction industry in 1987, the industry's accident frequency rate has been reduced by more than 60%. This is no coincidence. With CAD-7 as one of the key factors behind this reduction, it is fair to say that the program has been an unqualified success. Proposed amendments to section 103.1 of the Workers' Compensation Act would tamper with and dilute the success of this program.

Bill 165 proposes to give the board broad powers to vary the amount of rebate or surcharge established under an experience rating program based on the employer's practices and programs in the areas of health and safety, vocational rehabilitation or return to work, or based on "such other matters as the board considers appropriate."

Employer requirements with regard to health and safety, voc rehab and return-to-work practices and programs are already dealt with in the Occupational Health and Safety Act and elsewhere in the Workers' Compensation Act. Penalties are already set out for failure to implement proper practices and programs. Consequently, it is troublesome to think that these subjective considerations could also play a part in experience rating.

Even more troublesome is the broad discretion that the board would have through the catch-all provision to vary the amount of a refund or surcharge. This introduces the ultimate subjectivity to a program which has achieved unqualified success based only on the objective criteria of work injury frequency and accident cost.

An experience rating program should be nothing more than a program that rates experience. While this sounds too simple, it is worthwhile reflecting on the purpose for which experience rating programs were introduced. The primary goal of experience rating programs must be the reduction of frequency and cost of workplace injuries. This goal is achieved by providing the employer with the incentive of an opportunity for a meaningful return. The incentive is established through an assessment system which must be perceived by the employer as being predictable and equitable.

To date, CAD-7 has achieved this goal by providing the incentive for return through a predictable and equitable assessment system. Bill 165 threatens to introduce a subjective element to the assessment system, potentially diminishing or eliminating its predictability and equity and thereby putting the incentive in doubt.

By being predictable and equitable, experience rating has given employers some control over the substantial costs of workers' compensation. Experience rating gives employers the message that if they reduce accidents and bring workers back to work, they will reduce their costs. The real potential for reduced costs through rebates justifies the significant expenditures made on safety planning, safety training, the hiring of safety personnel and other safety initiatives. Once again, it sounds too simple, but CAD-7 works because it is a simple program. It should be left that way.

Turning to financial accountability, it's difficult to know where to begin in addressing the financial woes of

our workers' compensation system. COCA and numerous other presenters have already appeared before this committee and revisited important figures such as unfunded liability, which we've heard about today, cost per employee, cost per claim, administrative expenses as a percentage of revenue, and assessment rates.

While we continue to be alarmed by these figures, what we find most alarming is the one thing they all have in common. From bad to worse, all of these numbers keep moving in the same direction, and despite the ongoing outcry from groups on all sides of the equation, very little is being done to change this situation. In particular, Bill 165 offers little in the way of real improvement of the board's financial predicament. The lack of commitment to improve the board's lot financially is reflected in the fact that financial accountability is not even referenced in the proposed purpose clause.

The one attempt at a cost-saving measure contained in the bill can best be described as tinkering, as it is largely offset by exceptions. Tinkering with the system is not the answer. Ontario's workers' compensation system requires fundamental reform.

Turning to conclusions and in summary, we would submit that the proposed legislation does not properly address the important issue of financial accountability and that experience rating programs should not be undermined by the introduction of subjective considerations. We support the position advanced by the Council of Ontario Construction Associations that Bill 165 must be withdrawn. We recommend that an appropriate alternative to Bill 165 be developed through meaningful consultation with all stakeholders.

Mr Waters: I wanted to ask this of someone earlier on in the construction industry, and I didn't think it was a fair question to ask of an individual construction person, but you represent the association?

Mr Greco: Yes.

Mr Waters: The question is that first off you're assessed. The assessment, I think the other gentleman said, in his particular case was \$7 or something like this; \$7.65 I think was his rate. Then, if you're a good employer, you get a rebate.

Mr Greco: Correct.

Mr Waters: In your industry, across the industry, can you give us some idea—5%, 2%, 10%—what the rebate is?

Mr Greco: I don't have the exact figures because there are rebates and there are surcharges throughout the industry.

Mr Waters: Okay, and that's right. So if you're a good employer and you're getting a rebate, you're not paying \$7.65. You're paying somewhat less.

Mr Greco: That's correct.

Mr Waters: Where do you get that money back from, a lot of that money? Where does that come from?

Mr Greco: Where does the money come from on the rebate?

Mr Waters: Yes. From the whole program.

Mr Greco: That's right.

Mr Waters: Because it's exceeded the surcharge; like, it's exceeded the pot that it was to come out of. So obviously I think it must come out of the general revenue of WCB, doesn't it?

Mr Greco: Well—

Mr Waters: And if it does, sir, does that not add to the unfunded liability?

Mr Greco: Perhaps it does. I believe that's taken into account when the assessment rates are established.

Mr Waters: No, it isn't. I don't believe it is.

Mr Greco: I also believe that the rebate and surcharge system was established to be revenue-neutral so that rebates are offset by surcharges.

Mr Waters: Originally it was.

Mr Greco: Whether they are now or not is another story.

Mr Waters: Originally it was, but I believe we've already received figures that say that the rebates have now exceeded the surcharge system and are now coming out of general revenue, which means that it's adding to the unfunded liability of WCB.

Mr Greco: I agree with you, and my intention here is not to tell you that we should add to the unfunded liability by giving more rebates. If there are some adjustments to be made, it should be looked at, the figures and the calculations, but not by adding subjective considerations to the system.

Mr Waters: Indeed, some of these employers have come forward and have rebates in their corporations of several million dollars and they're saying, "We're paying this price," but they forget to tell us that when they're rebated several million dollars, that is not really the price they're paying.

I guess I get a bit concerned that no one's really—like, how do we get to the actual figure so that we know what people pay?

Mr Greco: Well, please be reminded as well that most often the money that's received by rebate is put back into safety programs and into hiring safety personnel.

Mrs Joan M. Fawcett (Northumberland): Right.

Mr Waters: Yes, it goes back in, but now it has outstripped the other so now it's coming out of somewhere else. I guess the problem is that it—I don't know. You're saying on one hand that you've got to do something about the unfunded liability, but then everybody wants the rebate and therefore you're increasing the unfunded liability.

Mr Greco: I'm not saying everyone wants a rebate. Everyone would love to have the rebate, but that's not the way it works. You have to perform to get the rebate. The way the system is set up now, if you perform, you get the rebate.

Mr Offer: I want to just carry on in that line. I find it absolutely amazing, the point that Mr Waters has brought forward. I think we've heard from the government representative that the rebates over the surcharges are now something in the area of \$150 million. In other words, the board is giving back to employers \$150 million based on the current rating system. And the

reason they're doing that is because there are good employers, there aren't the accidents.

The government is now changing the only thing in the act that works. They are changing the rating system. They are going to be changing the whole situation. They are going to be adding subjective measures, and we know the reason they're going to do that. They want to cut back on the amount of money they are giving good employers in cases where there haven't been any accidents. We hear day in and day out: "You really want to deal with the financial situation of the board? Cut down on the accidents. That's your biggest saving. If there isn't an accident, there isn't going to be an assessment and a growth in the unfunded liability."

1530

Here we have in the act, under the NEER and CAD-7, a situation which works. The government acknowledges that it works. The good employers are receiving back some of their assessment, and they are receiving some of that money back because they are doing the things that I would have thought we were all in favour of: making the workplace safer. The government in this bill is changing that, and I have no doubt it is to scoop the loot.

I would like just to suggest to you if you could possibly express to the committee what this change might mean to your association. I'm still awaiting the government's response to what sub (d) means in the rating system. What does "such other matters as the board considers appropriate" mean?

Thank you very much for your presentation, and thank you, Mr Waters, for your questions.

Mr Greco: I'm not sure that's a question, but thank you.

Mr Offer: It just drives you nuts.

Mr Leo Jordan (Lanark-Renfrew): Thank you for your excellent presentation this afternoon. I would like to follow up a little bit also on the incentives that the employer is receiving for having a safe workplace.

I've listened to two union representatives here this afternoon stress that the one way to cut the cost is to cut out the accidents, and here we have an incentive program that it's quite obvious the government wants to eat away at and eventually do away with, that allows the employer to invest some money in staff and other safety measures on the job with the employees so that he ends up with, if not no accidents, then definitely fewer accidents, and receives a rebate that helps him reinvest in safety measures on the job. Again I would ask, how do you see that affecting the industry generally as we see it being implemented by this government?

Mr Greco: I think our previous speaker was one of our local business representatives from one of the local unions and he mentioned to the committee that we live in a dollar-and-cents world. I would agree with that comment. In a dollar-and-cents world there's no better way to reduce accidents than to provide a dollar-and-cents incentive to the employers. That's what CAD-7 currently does, very simply, and the bill proposes to muddy those waters and to put that system in doubt.

Mr Jordan: In your brief here you've presented

several good ideas and you've very clearly identified the debt problem that's facing you as an employer with WCB. Do you have some suggestions for this committee? Before all the nice things that we'd like to do for the employee are taken into consideration, somehow we have to get our books in order so we have some money to keep the whole dang thing functional. So would you offer some suggestions to us in the government on how we're going to deal with this debt and how we're going to maintain a reasonable return to the employee? I understand at the present time he's getting 90% of his net income and it's going to be indexed so that eventually, in fact, the employee could be taking home more pay than he would have had he been able to be on the job.

Mr Greco: That's certainly one problem, and that has to be stopped. But I think the best suggestion I can make to the committee is that PLMAC had a group together. They spent thousands of hours looking at the system. They made many recommendations. For example, with regard to future economic loss, I believe they made something like 14 recommendations. I would suggest to the committee and to the government that they listen to these people; that when they put a committee together to provide recommendations, they give them their ear and that they do something about the recommendations and they don't put together a bill that completely ignores a group like that.

The Vice-Chair: I thank the Ottawa Construction Association for their presentation.

In order to help the members get through this afternoon, this committee will stand recessed for 10 minutes.

The committee recessed from 1536 to 1547.

FEDERAL EMPLOYERS TRANSPORTATION AND COMMUNICATIONS ORGANIZATION

The Vice-Chair: Our next presenters are from the Federal Employers Transportation and Communications Organization. Good afternoon and welcome to the committee.

Dr Roger Rickwood: Thank you for allowing us to attend today and give presentation on behalf of the Federal Employers Transportation and Communications Organization, otherwise known as FETCO.

I have here with me today Mr Curtis McDonnell, the solicitor with Canadian National Railways; Mr Miguel Bruno, with Canadian Airlines International Ltd; and Mr Ted Robbins from Air Canada.

We are going to go through our brief picking out parts of it, because we don't want to try and repeat a lot of material that has been covered elsewhere. You've seen some of this material in other formats. We want to try to focus in on things that we particularly have a concern in.

Let me read just for the first couple of pages from the brief and then we'll jump to parts that we think we want to highlight. It doesn't mean that anything we don't highlight isn't important; it just means that we want to focus on a few points.

FETCO, through the business steering committee, has been supporting the business caucus of the Premier's Labour-Management Advisory Committee, which the Premier of Ontario asked for advice on how the govern-

ment could reform the Ontario compensation system.

The Premier asked business and labour to work together to produce a new system which will pay injured workers fairly and meet the test of being financially sound. We believe that Bill 165 fails to meet that objective.

FETCO is an alliance of major transportation and communication companies with operations in Ontario and across Canada. It regularly expresses employer community views on workers' compensation issues. Members of FETCO are set out in schedule A attached to this submission. FETCO members come under federal labour, human rights, employment standards and health and safety legislation but receive workers' compensation services through provincial workers' compensation boards. FETCO includes both public and private sector employers. FETCO employers are mainly in schedule 2, but many of our subsidiaries are in schedule 1.

FETCO is deeply committed to reforming the Ontario worker's compensation system in order to maintain the costs of the system at a level employers can afford to compensate workers reasonably and to ensure security of future benefits for workers.

The members of FETCO support the principles of a no-fault program which provides reasonable levels of income security and rehabilitation to workers who sustain legitimate injury in the workplace and protection from legal proceedings for individual workers and employers. FETCO is seeking real fairness and fiscal responsibility in this system.

This submission is a summary of our concerns with both the reform process and Bill 165. You will note that our brief adopts some of the language of the business steering committee brief. FETCO also commends to your reading a copy of the clause-by-clause analysis prepared by the office of the employer adviser which we have found most useful in preparing our brief. If you will see appendix B, you will find that clause-by-clause analysis. Incidentally, I am the chairman of the advisory committee to the office of the employer adviser, and FETCO is a major actor in the OEA system.

Bill 165 is not a product of the bipartite group from which the government asked and received advice. This despite the fact that the PLMAC process produced an accord that had substantial support in both the labour and employer communities. The government's solution, in the form of Bill 165, is a clear breach of faith against the very group from which the Premier sought advice.

The bill as presently drafted will not address the fiscal crisis of the system nor the lack of financial responsibility or accountability that exists. Bill 165 does nothing to restore the lack of confidence that all stakeholders have in the system.

FETCO, in conjunction with the business steering committee, the Canadian Manufacturers' Association, the Council of Ontario Construction Associations, the Retail Council of Canada, the Canadian Federation of Independent Business, the Employers' Advocacy Council and the Employers' Council on Workers' Compensation, does not support Bill 165 and asks that it be withdrawn.

We could go through a long description of the reform process. You've heard that before. It has been a tortuous process. It has taken over a year to get to where we are today. I think you're well aware of the step-by-step that happened.

One comment I would make is that I personally, and I'm sure my FETCO colleagues, note a certain lack of incorporation into this document of recommendations made by the task force on occupational disease. This document was given over a year ago to the government and the only indications of action on this document we see and hear are the changing of names and one reference to funding. We ask you to inquire of the government as to when the recommendations from the task force will be put into legislative format.

Moving on through the government response section, I will not go into all the financial issues on the next page. We'll go over to the purpose clause, which is found on page 9, item 2, and I will ask my colleague Ted Robbins from Air Canada to comment on it briefly.

Mr Ted Robbins: Mr Vice-Chairman and members of the committee, I appear here not only as a member of FETCO but as a concerned representative of a major Canadian air transportation company which is federally regulated. I would like to enunciate to you that portion of our FETCO brief which deals with the purposes clause of the amendment.

One of the main components of the purposes clause of the accord reached by the Premier's task force was cost and the need to enshrine cost and financial responsibility into the act and to ensure that it applied not only to the WCB board of directors but to the crown and all the agencies of the crown. The present draft of Bill 165 is flawed in that it does not require cost to be taken into account when new policies are considered by the government or the board.

We would encourage this committee to initiate changes to the purposes clause of this bill. These changes should truly reflect the views of the Premier's task force and ensure that financial responsibility and control of cost are enshrined in the compensation system, and not just simply from an administrative or a governance perspective.

We do not believe that simply requiring the board of directors to act in a financially responsible manner, as set out in section 12 of the new bill, is sufficient. To ensure that overall cost control and financial responsibility will occur, we believe this entire section should be amended.

Dr Rickwood: We're now going to move to page 15, item 7, which is government authority to impose policy. I'll ask Curtis McDonnell from Canadian National to speak to that.

Mr Curtis McDonnell: I'd like to thank you, Mr Chairman, and members of this committee for the opportunity to permit us to come before you today and speak to you about our concerns dealing with this legislation to amend the Workers' Compensation Act. The area that I'd like to address you on is actually section 16 of the bill, amending section 65 of the act.

As you're aware, the Workers' Compensation Board is

a body corporate. It has statutory powers and duties. It has a board of directors, officers and employees that the board is empowered to hire. It has been in existence for about 80 years now, and during that period of time it has enjoyed and has been at arm's length from the governments of the day as it carried out its duties.

This provision in the act which empowers the government of the day to dictate policy to the board is a dramatic and extraordinary departure from the traditional arm's-length relationship that the board has enjoyed and worked under with the governments of the day. We really do feel that this ends up putting the whole policymaking issue out of the hands of the board, where it is statutorily authorized to be done, and actually into the cabinet; not just into the Legislature but into the cabinet.

From our perspective, one of the problems we see is that it's going to compound the confusion that already exists about who really is in charge of policymaking. From our perspective as employers, there really is confusion out there because we see on a daily basis what appears to be almost a duel between the board, which from our perspective has the statutory authority to make and enforce policy, and the Workers' Compensation Appeals Tribunal, which has a statutory authority to review decisions of the board making policy. It is confusing and it is unsettling.

One of the problems that we also see is that WCAT has no statutory mandate to be fiscally aware of how its decisions impact on the finances of the board or the employers of the province. So as it tries to make policy and dictate it to the board, we now have the government making policy and dictating it to the board. We have a board that is basically going to be very, very difficult to operate. It's difficult legislation as it is. There's no question about it. The people at the board who try to carry out their duties will be doubly confused.

Accordingly, it's our recommendation, if we can put it that way, that this committee recommend to the government that this section be amended and actually deleted. If the government is going to have a compensation board, it should empower it by legislation to carry out the policies that it sees fit, to carry out the purposes for which the board has been created. But to have the government coming along and being empowered to involve itself in policymaking simply adds to the confusion.

It appears from the legislation, when you look at section 65.1, that it's for a short period of time, but I would suggest to you that when you look at 65.2, in fact the memorandum of understanding is going to allow the policy dictation process to go on for at least five years or more, because the memorandum of understanding which is legislated into existence provides in paragraph 3, "Matters of government policy that the board shall respect in the conduct of its affairs." That memorandum would appear to be in effect for at least five years after the date of coming into force.

I want to say more, but I think I should end there. Thank you very much for your time.

Dr Rickwood: We would like to deal with the return-to-work issue, which is a major concern to the federal employers. We employ some 400,000 people across Canada, about 200,000 in the province of Ontario—60% of our workforce is unionized.

I'll go to page 13 of the brief at item 6, "Return To Work." The re-employment provisions of Bill 165 are inconsistent with the accord and do not reflect the understanding reached by business and labour on this very complex issue. The accord recommended that the current provisions of the act be enforced by the WCB and that positive initiatives be pursued to encourage and promote re-employment. Bill 165 distorts the spirit of the agreement.

The government has failed to provide any explanation or legal opinion as to why the wording of the current act does not provide the WCB with the necessary authority to enforce the re-employment obligations. We understand the government has obtained a legal opinion on this issue but, despite requests, has failed to provide it to stakeholders.

The mandatory mediation provisions in section 21 of Bill 165 were not recommended or agreed to in the accord and will impose yet more bureaucracy in an already overly complex system. Through these provisions, the bill is moving the WCB away from the role of being an adjudicative body to an agency that is focusing on return to work and mediation as its primary function. This was not part of the PLMAC accord nor is it part of the board's historical mandate. The WCB's primary mandate is to determine entitlement to benefits and services under the act and then to provide these services, not the other way around. It is not in the WCB mandate, nor was it in the accord, that the WCB's vocational rehabilitation mandate change from one of rehabilitating the worker to the point of employability to securing employment for the worker, which the government appears to be attempting to achieve in this bill.

The penalties proposed for employers who do not participate in WCB vocational rehabilitation programs were not part of the accord either, yet the government proposed them for its own reasons. The accord attempted to promote positive incentives and cooperation as a way of improving the effectiveness of these programs, not imposing penalties on employers for non-cooperation in programs that are of questionable value and effectiveness.

The bill does nothing to address the problems with the shortage of services available to employers, the regional disparities that exist in availability of medical and vocational rehab services or the lack of internal services and programs within the WCB to assist employers in developing effective return-to-work programs. There is also nothing in the bill which encourages the worker to cooperate in a voc rehab program. This places the employer in a very difficult position where the worker is not cooperative.

Bill 165, as presently written, will in fact make returning to work for injured employees more difficult, more time-consuming and more costly. This issue has already been put before you in a brief by Dr Michel Lacerte at your London hearings on August 29. We have

attached that brief—see appendix C—because we find the text very useful in getting the idea across that we must have effective return-to-work programs, not legalized, penalty-based return-to-work schemes.

Subsections 51(2) and (3) require for the first time that doctors must have the consent of the injured employee before they can transmit a fitness assessment form to the employer. This is in contradiction to our obligations, as employers, under the Ontario Occupational Health and Safety Act and the Canada Labour Code, to provide a safe workplace. If we cannot assure ourselves the worker is fit to work, we cannot meet our safety obligations to our workers, to co-workers and to our public and customers. We do not need diagnostic information on the fitness assessment form. We need only restrictions. We have other means under the act to obtain medical information to determine work-relatedness, although we are not happy with the way that WCAT administers section 23, which deals in medical information. Further, the cost savings estimated by the government are not supported with objective data and are purely soft estimates.

I know my time is running out here—three minutes left. I would just point out that in the document Dr Lacerte has prepared and tabled in London he refers to challenges linked to the collective agreement. We are concerned at FETCO that this aspect of dealing with the collective agreement has not been dealt with in this legislation.

In Toronto, Mr David Brady brought to your attention the Supreme Court of Canada decision by the name of Renaud, which puts an equal obligation on the employer and the union to end discrimination. We think that the collective agreement provisions should be looked at in the light of Renaud.

That's the end of our submission. We thank you very much for the opportunity to come to you. I think this is a tremendous process. Only one comment I would have on it: The TV cameras are not on, and in the communication industry, which we represent, we think all of Ontario should get a chance to see what we're saying here in Ottawa, in London and Sault Ste Marie. So, please, when you go back to Queen's Park, get the camera turned on.

The Vice-Chair: Thank you. A brief comment or question. Ms Murdock.

Ms Murdock: Mr McDonnell, it's your comments I'm going to address, although I could address any one of you. We just have to sit down and talk.

Actually, it's not unprecedented. It already exists in OTAB and for Hydro, and there is no one-year time limit in both of those bills. I would have thought it would be understandable to have a transition period where a board of directors consisting of labour and management would be able to sit down over a period of time and work out protocols of how they're going to work if consensus can't be reached on certain issues and so on. The experience in BC, when they set up their joint board, was that it took over a year for their board to work out those kinds of protocols. In the meantime, somebody has to be running the show so that you have that one-year period. That's why it was put in and I would have thought that would have been understood. The other thing is the MOU—

The Vice-Chair: That's all for an introduction. Let me just thank you.

Ms Murdoch: Okay.

Mrs O'Neill: Thank you for being so clear about this not being the accord, and that accord is not an old document that you were very involved in. It's very important that you talked about the changing roles, mandates and powers of the WCB. I don't think too many presenters have brought that forward as explicitly as you have, and the shortages of services in return-to-work programs were all going to recreate those, or create them, I guess.

I would just like to ask you one question. You must have been surprised when you saw Bill 165, especially having been involved in the accord. Where do we go from here? What is your suggestion? Bill 165 can no doubt pass with the government's majority. Do you have any faith that the amendments that are proposed will be helpful or that the royal commission process will iron out some of these very serious things you've brought to our attention?

Dr Rickwood: As briefly as I can, we have asked that the bill be withdrawn because we think the bill is fundamentally flawed. It does not mean that this committee cannot recommend constructive amendments that the government could take back to another venue. The venue could be the royal commission, but what we really believe is that the best way to deal with the issue is to get the five major employer associations in this province to sit down with the five major union coalitions in this province. This is how you solve problems. You get people who are knowledgeable on the issue who know each point and can work it out.

Unfortunately, that was not the process the Premier chose to do. We went along with the process but we believe this is the best way to do it. A royal commission, as presently configured under the chair, who we hear is going to be the chair, will not give you that kind of an outcome.

Mr Carr: On that same point, thank you for the presentation. It's obviously very comprehensive and in great detail, which should help with some of the amendments. I want to follow up with what Yvonne said because I want to be very clear. We've heard the government, and I think even today we heard unions; I think it was the UFCW that came in today and said this bill reflects the agreement that was put together. I want to hear from you very definitely—I know it's similar to Yvonne's question as well—as far as you're concerned, this bill does not reflect the agreement?

Dr Rickwood: No, it does not.

Mr Carr: Okay. Thank you very much. One other thing too—boy, that's straight and to the point.

The Vice-Chair: See if you can do it in like 10 seconds.

Mr Carr: I can't say anything, but good luck and all the best.

Dr Rickwood: Thank you very much.

The Vice-Chair: I thank the Federal Employers Transportation and Communications Organization for

bringing us its presentation this afternoon.

1610

STORMONT, DUNDAS AND GLENGARRY
INJURED WORKERS RESOURCE CENTRE

The Vice-Chair: I call our next presenters, from the Stormont, Dundas and Glengarry Injured Workers Resource Centre. Good afternoon and welcome.

Mr Sydney Gardiner: Mr Chairman, members of the standing committee, fellow injured workers, members of the House, members of the media and fellow taxpayers, on behalf of the Stormont, Dundas and Glengarry injured workers and indeed all injured workers, I thank you for the opportunity to present this brief. My name is Sydney Gardiner. I have been trained to level 3 by the OFL as a worker representative to protect injured workers and ensure their rights under the Workers' Compensation Act. I use the word "protect" as for the most part injured workers need protection against employer badgering and mounds of forms, policies and procedures which are foreign to most injured workers and extremely intimidating.

There are a number of issues which I would like to address. The first one is administration. Although it is impossible to deal with this problem in the short time allotted, at least it's better than the 12-question paper sent to me recently. I've got a little more time and I thank you for that.

I question the amount of training received by the claims adjudication department, as unions, injured workers and their representatives have for years complained about how long it takes the WCB to process claims and award benefits. How often are injured workers and their families forced to apply for social benefits, social assistance, when claims are not resolved for months and sometimes years? It is my understanding that WCB adjudicators are often responsible for as many as 150 cases at one time, which certainly must and indeed do account for untold delays in processing claims.

Board personnel have said, and it is my experience, that the current level of adjudicator training is not sufficient to equip adjudicators with the proper skills to interpret the WCB act. Adjudicators are considered entry-level personnel, yet these inexperienced workers are making the most important decisions.

Since the real decision-makers are the decision review specialists, I would make two recommendations:

(1) That adjudicators spend a minimum of three months working directly with decision review specialists as part of their training;

(2) That the panel seriously consider eliminating initial adjudication personnel, as this is a duplication of work, since most adjudication decisions are overturned by decision review specialists.

These two steps would eliminate inefficiency and duplication of work.

I would like to acknowledge also that the responsibility for the inappropriate training of adjudicators lies squarely on the shoulders of WCB's upper management and is no fault of the adjudicators.

My next issue deals with initial paper decisions. It has

been my experience that most initial denials of claims stem from the fact that employers' files are used to form those negative decisions. More often than not, the employee is not contacted for his input and the employee's family doctor's testimony and medical specialist's comments about the injury are completely ignored.

The denial decision is reached by a panel of experts including medical specialists. The injured worker is then forced to appeal, which usually results in the board's decision to overturn the initial decision. This normally happens at the hearings level, where all medical information, including the worker's doctors, opinions, witnesses and the injured worker can present the truth. Again, the original denial causes hardship to the injured worker and his family, it causes undue delay to claims being processed and is more duplication of work at lower levels. There begins to emerge a sense that a paper empire has been built up over the years.

I offer my opinion that the present system needs a complete restructuring to eliminate inefficiency and duplication, which in turn will reduce costs. There is presently an eight-month backlog of hearings outstanding at WCB.

Next, I would implore you that the standing committee ensure that the new health and safety certification act be fully enforced.

For the last two to three years we have been inundated by employer propaganda, which has been spoonfed to the media, about the woes of the ever-growing burden of the cost of maintaining the WCB programs. The media have bombarded us with the WCB deficit (unfunded liabilities) and information again made available by employers, yet many refuse to take the responsibility for:

- (1) Training their new employees how to use industrial equipment, therefore reducing accidents;
- (2) Refusing to deal with the new health and safety certification program and, instead, opting out for the "Stay alive till 95" slogan;
- (3) Refusing to allow employee input when it comes to health and safety issues; and
- (4) Not upholding and abiding by present laws in place regarding legislated programs such as WHMIS, workplace hazardous materials information system.

I recently asked a number of young workers in a number of places what WHMIS meant, and the response from one was that it might be some type of women's movement. That's how much they know. Most others didn't know, and some thought it had something to do with chemicals. So much for training.

It becomes obvious that health and safety is totally disregarded by many employers, not all. When are legislators of this province of Ontario going to enforce the existing health and safety regulations? What is it going to take to get through to the employers that if there is a 20%, 30%, 40% or, God forbid, 50% reduction in accidents in the workplace, their costs will be reduced to almost as much and that maybe the \$11 billion—and that was tongue in cheek; I'm sorry about that—unfunded liability would be reduced to nil, and "nil" is a word I put in there because somebody's had it coming.

If we reduce accidents, we will reduce costs. If we enforce existing laws, we then reduce accidents and again we reduce costs. Is this too simple for many employers to understand?

I must beg, if need be, that this standing committee help to and indeed fight to ensure injured workers are not discriminated against because of their accident. Legislation must quickly be introduced that will protect injured workers from the indignity of having to beg for a job after they are completely rehabilitated. Legislation must force original employers from the accident site to re-employ the injured workers. Legislation must also include complete confidentiality of the worker's case. Legislation must include that the injured worker be completely retrained to do other types of work if he or she cannot return to his or her original employment because of his or her injury.

NAFTA and the American influence, which is growing in Canada, make it imperative that the above issues are legislated to protect injured workers' rights. Witness that there are companies in the computer information highways existing now which pay \$50 to the US workers' compensation and then they sell the information to prospective employers. Needless to say, the employees who have used workers' compensation or have used sickness insurance, who are perceived as possibly having any kind of disability, or sickness, for that matter, do not get hired. This is direct discrimination and completely disregards human rights.

Legislation dealing with the above issues could be simply explained to some employers as recycling. In Ontario, we have a blue box recycling program for our garbage. Surely we should be responsible enough to recycle our injured workers and give them back their dignity. We must examine the retraining programs offered to injured workers. It has been my experience that courses which are worthwhile and would provide the injured worker a good living are ignored. Time and time again, workers who have had good-paying jobs prior to their injury are steered in the direction of gas pump attendants, and we only have so many gas pumps in Cornwall. Once again, I blame WCB's upper management for poor training programs.

With regard to the royal commission, I am totally in agreement that it be set up as soon as possible. It is obvious that there is a need for formal efforts being made to review the ongoing problems. Over the years, persistent problems have only been resolved as a direct result of persistent complaints. It is my understanding that a royal commission will review the WCB of Ontario.

Over the past nine years of change, review, selection of qualified individuals to participate in a task force or other provincial inquiry groups, not one has been included for eastern Ontario. I guess Ontario, again, ends in Kingston.

I would formally request that Mr Fred Empey, chairman of the Local 212 compensation committee, be considered as an invaluable member of your task force. Mr Empey is one of the most knowledgeable representatives in eastern Ontario who would contribute immensely to any task force dealing with delivery of service, policies

and procedures, delivery of service through integrated services and bureaucracy which needs serious review. Mr Empey's 25 years' experience would be a positive move.

Hopefully, Bill 165 will eliminate some of the hardships and indignities—with some changes; I have to add that, please—suffered by injured workers in Ontario. Can we be proud of our discrimination and unfair labour practices levelled at our disabled workers? Should we feel compassion for those whose families have been destroyed? Should we feel compassion for those who've lost their homes, compassion for those who have attempted suicide, or those who have succeeded? I've dealt with some of these people, so I know what I'm talking about here. Should we continue to ignore the causes and responsibility for those whose lives have been destroyed by an accident?

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Let's in Ontario be leaders in progressive laws and in legislation which will protect everyone. Let us not accept the fact that 800 workers in Canada die in work-related accidents each year. Let's show leadership in Ontario and work towards a zero death rate and zero deficit. Let us not try to erase our deficits by eroding the benefits of the poorest citizens, who are the least able to protect themselves, the injured workers.

I cannot in good conscience collaborate with any ideology that unemploys injured workers, degrades, punishes, oppresses, exploits and dehumanizes men and women, not only in their workplace. Instead, I want to affirm my opposition and resistance to it.

In conclusion, I would ask the standing committee to report back to the legislators that Ontario look seriously at universal WCB coverage. There are many institutions which lobbied successfully to be exempt from coverage: banks, funeral homes, worm pickers, taxi drivers. Recognize that statistics show 20,000-plus small businesses are not registered with workers' compensation—700,000 workers. There's some money there. The Ontario government should enact legislation to cover every worker in our province. Furthermore, when a business sets up in Ontario, when it applies for work permits, it should automatically be registered with Ontario's Workers' Compensation Board. Everyone would then pay their fair share and reduce the unfunded liability.

Finally, the standing committee here today must take full responsibility for the information given to you by these people, by myself, by everyone. Injured workers' dignities and human rights issues now rest with you. We must, as givers of information, trust that the committee will forward the truth to the legislators, who will deal fairly with injured workers of Ontario. Please do not, as in the past, collect your paycheques and then ignore the work which must be done to ensure that this was not just an exercise in futility.

On behalf of the injured workers of SD&G, I thank you for allowing me the opportunity to express our views. Please understand that what has been expressed today is just a minuscule part of the issues which need resolving and that I and the SD&G injured workers are available at any time to help you wherever we can.

The Vice-Chair: Thank you. About a minute and a half each.

Mr David Johnson: I thank you very much for your very forceful, powerful deputation. It's hard to know exactly where to begin, but right off the bat, you mentioned the adjudicators. We had a deputation yesterday before us in Sault Ste Marie indicating in much the same manner about the adjudicators, that they really weren't—well, I think she used the word they didn't know diddly-squat or something like that. At any rate, I just wondered if your experience in that regard is rather uniform. I don't know how many of the adjudicators you've dealt with, but is this a common situation?

Mr Gardiner: To me, it is, yes. The people I've dealt with, what I've dealt with, there's a lot of confusion.

Mr David Johnson: Again, you put the problem here in terms of not having enough training, I guess.

Mr Gardiner: Definitely.

Mr David Johnson: You put it on the WCB management in terms of not—

Mr Gardiner: Yes, absolutely. It's their responsibility. It's what they're getting paid for.

Mr David Johnson: All right. Now, in terms of the funding, I guess you make it clear that the money for the improvements you're looking for—you're looking for universal WCB coverage, which more than likely would be extremely expensive, and you're saying the money should come from those institutions not presently in the plan.

Mr Gardiner: Some of the money.

Mr David Johnson: Is it your view that this is where all the money would come from or—

Mr Gardiner: No, sir, but it would help.

Mr David Johnson: Where else would the money come from?

Mr Gardiner: Well, the money would come from investment losses that are really substantial, and the new castle in Toronto, which shouldn't have been built to start with. That's where a lot of the money has gone.

Mr David Johnson: Yes. That's unfortunate. That's where the money's gone, but where would it come from now?

Mr Gardiner: Partially from these people, and partially, as you can see in my brief, if there's a reduction of accidents, definitely the payout will be a lot lower.

Mr Waters: I guess everybody's preoccupied with cost, so we'll talk about it for a couple of minutes.

The Vice-Chair: No.

Mr Waters: How long then?

Mr Fletcher: A minute and a half.

Mr Waters: Okay, a minute and a half then.

You know, I came out of the labour movement, and I remember having employers in central Ontario say to me: "We're going to fight every case. We don't care whether the person loses their arm. It doesn't matter. We're going to fight it—a back injury—we're going to fight every case." Therefore, you have to have all this bureaucracy

there to deal with all of those cases, because it doesn't matter whether it's a justified case or a questionable case, they want to fight it. Wouldn't that add to the unfunded liability, the cost?

Mr Gardiner: The bureaucracy you're talking about, according to what I put in my brief, should be reduced, because there's an awful lot of duplication in it. That's your job, to find out where it is and bring it apart, and there is duplication of work, because you see one or two people prior to getting to hearings, and when you get to hearings they completely disband whatever was done before. Why do you need the first two steps, and how many employees there? I'm not an advocate of people losing their jobs, but there should be a hell of a restructure, and some of them don't belong there. It needs to be changed. I've dealt with people, when we're talking about experience, who were photocopy people 10 weeks prior to adjudicating a case. That's my experience.

Mr Offer: Thank you for your presentation. We've heard, and I'm just using some round numbers, that on a percentage basis, 20% of the adjudicators basically get through 80% of the cases because they're pretty in and out types of situations. It's how you manage those last 20% of the cases which cause all the delays and the layer upon layer of appeals from adjudicator to decision review specialist and things of this nature.

I'm not critical, to be very frank, of the adjudicators, because I recognize they're people just trying to do their jobs. The concern that I have is, are we putting the least experienced individual at the front line when that first decision, which is so crucial, is made and should we really be taking a look at providing more training for adjudicators so they can deal with the most difficult of decisions in a way which is realistic and rational and helps you move with those cases? I'd like to get your thoughts on that.

Mr Gardiner: I have to agree with what you're saying, and it's in the brief. Again, we're talking about duplication. You have just reiterated something that I have in here, and that's what happens down there.

The Vice-Chair: On behalf of this committee, I'd like to thank the Stormont, Dundas and Glengarry Resource Centre for Injured Workers for its presentation this afternoon.

1630

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA

The Vice-Chair: I'd like to call forward our next presenters, from the Labourers' International Union of North America, Canadian tri-fund. Good afternoon and welcome to the committee.

Mr Daniel McCarthy: My name is Daniel McCarthy. I'm with the Labourers' International Union of North America, and the tri-fund represents our three major funds: health and safety, training and labour-management cooperation. Prior to this present position, I was in charge of the WCB cases for Local 183 in Toronto, and I also sat on the chairman's task force on service delivery.

I've provided you with some background information that I won't go into in detail, but it does give you a

flavour for why construction has to be considered unique, how it is a significant employer in this province and that it requires specially adapted legislation. My remarks will obviously be from a construction perspective.

At page 3, the obligation to re-employ: Bill 162 left us with two hurdles that virtually exclude construction from re-employment. Section 54 needs amendments, and may I suggest it would be rather simple. In subsection 54(9), subsection (1), one year's continuous work, and subsection (16), 20 employees, need only to be added to the exemption of subsections (4) to (8), and then the construction regulations could be reviewed.

I gave you some facts on page 4 as to how these hurdles work, and I hope you appreciate that these data on page 4, the 41.2% of workers being with the same contractor in any given year, were just part of a major study which was funded by the federal and provincial governments. COCA's own statistics show that 75% of their member companies have between nine and 15 employees, so you're virtually excluding the construction industry with 20 employees.

I'd like to move on next to vocational rehabilitation services at page 5. First I would like to give a caution. There is a problem with putting in specific legislative amendments when it comes to how the board should operate. I'll give you an example. The last legislation put in a 45-day provision. The volume of cases was so high they couldn't do it. When I was on the task force, we found out the 45-day letter was generated by a computer. Now you're suggesting that the computer write both the employer and the worker. It was very unsuccessful. I don't think it should be repeated. Clearly, what you want is the resources that are necessary to the cases that need it, and when you put in blank legislation, the board has no option but to meet it in one way or another.

I would suggest that under vocational rehabilitation services, you can probably put them into three categories. The first are employer incentives: an onus to cooperate, the power of the board to judge that initiative and the establishment of those criteria in the experience rating. I think those are good and would recommend it. Where the employer is uncooperative, the workers should be advised of their rights under the Human Rights Code and that they should be launching an appeal immediately, because it takes a long time to get through that.

With regard to the section 53 amendments that are listed, I think it's important to understand that vocational rehabilitation can roughly be lumped into three categories. There are those cases where the worker is going to return to work with the accident employer. It may require some accommodation. It may require what they refer to as transitional work programs and some kind of interim period before they're able to do their full duties.

The second one is where the employer may find they've got alternative employment that meets the sustainable and available and all those case criteria. It's not the same job, but it's acceptable.

The third instance is where due to a number of factors it's quite clear the injured worker is not returning to the accident employer. In those cases, you're looking at returning towards an alternative career. If you keep those

categories in mind, I think it's very important when you look at the recommendations and you look at the medical reporting.

In the construction industry, we have specific problems. Accommodation is difficult, if not impossible, on most building sites. Our members have a lot of barriers—non-transferable skills, education, language—and they require special treatment. They should not be denied retraining on the basis that they cannot duplicate their earnings profile quickly. And those who return to the accident employer face the obstacle of a lack of light or modified work. Transitional work programs are not impossible; they require innovative thinking and cooperation, and we should be doing more research in this area.

The problem we encounter because our industry is project-oriented and seasonal and cyclical is that very often a worker is returned at no wage loss. They may be doing a flag person's job, generally at \$10 an hour, and being paid \$20. They are kept till either the end of the project or the end of the season.

By the time they are laid off and come back looking for work, their file is history. They may never have recovered. They're denied retraining; they're denied rehabilitation. It's a huge problem in the construction industry. I think we have to start looking at recommendations where in order to overcome the seasonality and the project orientation, we start dealing with associations and not individual employers.

In terms of the medical reporting, when I gave you those three rough categories of vocational rehabilitation, if you look at section 51, which is poorly drafted, in conjunction with 63(2), where the medical report should be available is where some kind of transitional work program is being worked out where accommodations need to be made, not in the case where the employer is not going to rehire for valid reasons. They may be off being retrained for something else. The employer doesn't need input and they don't need access to the medical reports. Clearly, they never need access to the medical report; it simply needs to go to the vocation rehab counsellor, who can look at it, place a summary and bring the important facts to the table when they're trying to work out some kind of transitional work program.

In terms of the board of directors, changes on composition, its relationship to the Ministry of Labour and the clarification of its duties, I think these are positive. They were recommended by a labour-management task force in July 1992. They should move forward immediately. I would hope the construction industry remains as part of the board of directors.

In terms of mediation services, maybe it's just the drafting that uses the mandatory shell and uses the word "objection," which is associated with after the decision is made. If you're going to have mediation services, I think it should be a resource to a vocational rehabilitation counsellor or part of the rehab counsellor's training. Mediation is effective before, not after a legal decision has been made, and the appeal route is simply delayed at that point.

The payment to older workers is long overdue. It's a step in the right direction. But I must add that the

regulatory adjustments required in social assistance legislation must be done in order to ensure that the money reaches the workers. Otherwise, it's just going from one administrative function to another.

In terms of the indexing formula, I think it's unnecessarily punitive. Consecutive years of low inflation freeze a fixed income with a cumulative impact. Then, when inflation rises rapidly, as is now being predicted, the 4% cap creates a large impact in a single year. At a minimum, I would like to see the cap eliminated, but preferably there should be no de-indexing of pensions.

I've provided also an appendix, which simply gives the recommendations. I've tried to keep my remarks brief so you can ask me some questions and I am hoping that they'll be directed towards the specific considerations for construction.

Ms Murdock: First of all, I want to thank you. LIUNA has a reputation for a lot of good training and so on, so I'm glad to see you. Admittedly, and I think it's pretty plain, construction is such a distinct and unique kind of group that under OLRA it has its own sections, and I know there are negotiations going on to talk about the kinds of things under workers' comp that have to be looked at, but it's sort of interesting, the idea of sectoral groupings of employers for return-to-work or re-employability provisions. Are you saying that even though you're separate business persons, you are going to have to form a coalition or an association in order to have return-to-work programs?

Mr McCarthy: Clearly, if we started with the ICI sector having an association which represents all the companies as a bargaining agent, it is already legislated, it's already enshrined, that body is already in existence. What I'm suggesting is that same concept in the non-ICI. I mean, those associations already exist in the non-ICI as well. The form work, the road builders; they all have associations.

What I'm simply saying is that if you've got a small employer whose site closes down—it's a six-week project, there's an injury, the worker's ready to come back in seven weeks and he has nothing on the go. Then somebody else in the association—they're going to be rated together, so it would seem to me that we can begin to look at construction in those things.

1640

The biggest obstacle when the construction regulations for re-employment—the attempt was made to draft something and it took over a year—was that we had the statutory impasse. We had subsection (1) and subsection (16). You can't change the statute and regulations and we got nowhere trying to get around that. I think if we could remove that with this present legislation, then we could have a more successful go at the construction regulations.

Mr Offer: Thank you for your presentation. I'd like to talk to you, in the specific context of the construction industry and the bill, about section 72.1, the mediation aspect. I think it was in London that we heard that the mediation as proposed is a difficulty because it's being called into play after a decision has been made, as opposed to prior.

I'm wondering if you can share with us—I know you discussed that part. I think it's important, if there can be a change in this legislation, that to be effective mediation must be prior to a decision being made.

Mr McCarthy: The difficulty with the way it's drafted is that objection has a very long and specific historical meaning in WCB parlance. Everybody who has seen a letter that accompanies a rejection—it says "if you wish to object." The whole concept of objection is identified with a decision; a decision in the negative. The way this is drafted is, after a series of five decisions you can bring in a mediator and then the mediator is mediating between a decision-maker and it becomes literally a level of appeal.

I really think mediation is a good thing, but it certainly has to come before the decision is made. It certainly has to be kind of part of the educational process, and what's interesting is, in the re-employment part of the act, clearly mediation comes before a decision is issued and it is set up that way in the act.

I might add one thing I missed in: the five sections that list the decisions that should be made. One is where a worker is uncooperative. We're introducing the concept of an employer being uncooperative, but it's not mentioned in there as requiring mediation and I think it should be. We're adding balance. Let's keep the balance when we introduce something like mediation.

Mr Offer: Just one other point, and it has to do with the ratings: This is not a part of your presentation. We have heard from the construction industry that the rating system, the CAD-7, has worked well, that the changes that are being proposed should not be instituted because there has been, on a results scenario, a positive effect. I'm wondering, since we have you here and since you are giving information from the sphere of the construction industry, your thoughts on CAD-7, and does it work well.

Mr McCarthy: My experience has been negative, and for two reasons. One scenario is the employer who uses the no-lost-time injury and keeps the person on the payroll, and I've had too many experiences of that when I was doing case work. The extreme case was a chainsaw into the hand, and he was on no lost time. He had three hours' surgery at the same time and he only came to us three months later when they tried to bump down his salary. But those kinds of things happen because they begin to look at their measurements so closely.

The other problem is more structural and it's that CAD-7 again uses the manufacturing-industrial paradigm. I know of a number of employers who got huge amounts of money back because they had improved safety records. What it really meant in the recession is they didn't have much work. They used to have several projects on the go at any given time, so in 1991 and 1992 they had almost no projects on the go and they got big rebates because the number of injuries was reduced. I don't think that's a very good revenue saving; they like it but, quite frankly, it's typical of CAD-7. This is CAD-7 that applies to everybody, even if you've got projects—you've got projects if you win the bid. But they looked at it as if you were an uninterrupted business over a 12-month period and based your performance on that. Let's face it,

we went from in 1989 not being able to supply enough workers, to 1990. The statistics are that we're down 76,000 workers as of the end of 1993 from 1989. We're supposedly in a recovery mode and we're still down 76,000 construction workers in Ontario. So you can imagine how CAD-7 did not work for construction. They used the 12-month measuring thing and it just—the usual problem.

Mr Carr: Thank you very much for your presentation. When the construction industry came in, they focused a great deal on the financial concerns and you alluded that it did, and what's happened to your industry. I don't need to tell you what's happened in the construction industry. They were focused on the financial aspect for a lot of reasons—with the unfunded liability, their assessment being one of the highest, 100% employer-funded. They realize that they've gone through tough periods and they're very, very concerned about the financial situation because they are fearful with the unfunded liability assessments going up and all the things that have happened.

Surely your membership, having gone through—and you alluded to the problems that you've faced—must be concerned, as the employers in the construction industry are, about the costs. You didn't mention it in your brief. Would you like to comment on the overall financial stability? Obviously, with what you've been through, your membership is going to be affected if costs go up through the WCB. It potentially could be one of the reasons that they won't be employed, because of the increased costs. There are a number of reasons, but it's a big, big factor, particularly in your industry. Would you like to comment on that aspect of it?

Mr McCarthy: I could give you three comments. It's unfortunate that when the deficits began to appear in the early 1980s they were not addressed at that time because, quite frankly, anywhere from 1984 to 1989, there was so much work going on no one would have batted an eye at paying appropriate premiums during those years and not having the deficit get out of hand the way it did.

My second comment is that I am sort of tired of hearing the \$11.4-billion deficit because I don't know of an insurance company that has a dollar in the bank for every dollar it owes. My understanding is that they basically go on some kind of thing around 65% or 70%, which means that if we're funded approximately a third right now, there's another third out there that we should be concerned about, but not the remaining two thirds.

My last comment is that the biggest cost that's going to hit the construction industry is FEL. It is not neutral. I know it was introduced as being neutral, but it is not neutral. Anywhere, whether it be in construction or the resource sector, where you have a combination of high wages, non-transferable skills, educational barriers and language barriers, you're going to be having high FEL awards because they're deemed to be school crossing guards. It used to be they were given jobs as school crossing guards when a construction worker got injured. Now they're being deemed to be school crossing guards at minimum wage, and you could imagine that if you were a form worker at \$22 an hour, that's quite a differ-

ence for a company to be paying you \$12 or \$14 an hour until you're 65.

That is a concern of mine and it underscores the importance that we better make the changes on the obligation to re-employ in the construction industry and we'd better make changes in vocational rehabilitation so that we are not statutorily restricted because they can't get back to their earnings profile within 12 months. Either we make those changes or that's going to really kill our employers—not the mega issues, but that particular one, because that goes on their private bill.

Mr Carr: One of the things the construction industry's concerned about is, they feel their assessment is higher compared to other industries. Do you agree with them that assessment for your industry is too high?

Mr McCarthy: Unfortunately we're still a high-injury risk. Until that is changed, the premiums are going to have to be paid.

1650

EMPLOYERS' ADVOCACY COUNCIL,
OTTAWA CHAPTER

The Acting Chair: I would at this point in time call the Employers' Advocacy Council to come forward.

Mr Ferguson: While they're doing that, Mr Chair, I was just wondering if we would have available from research generally what the unfunded liability ratio would be for company pension plans in Ontario.

The Acting Chair: We can ask research to supply that for you.

Mr Ferguson: I don't want anyone to spend a whole lot of time on it.

The Acting Chair: If you could introduce yourself for the sake of Hansard and possibly leave a few minutes at the end of your presentation for some questions and interaction with the committee, it would be appreciated.

Mr Ray Bordeleau: My name is Ray Bordeleau. I'm the chair of the Ottawa chapter of the Employers' Advocacy Council. With me today is Madeleine Meilleur, who is the vice-chair. Our submission on Bill 165 is limited to six specific topics. I won't be reading the submission that was handed out, I'm just going to elaborate on some of the points. I'm sure you will keep the submission for bedtime reading tonight.

We'd like to discuss the powers of the government to intervene in the affairs of the board, the structure of the board of directors, vocational rehabilitation and reinstatement, the experience rating system, the purpose clause and mediation.

The power of the government: Under section 65.1 the minister has powers which could significantly alter the fundamental operation of the board. The ability of the government to influence and change directions and policies of the board without being accountable is unprecedented. These extraordinary powers could cause irreversible damage to the administration of the board.

The structure of the board itself: We believe the board of directors should reflect the reality of the employers who bear the burden of the workers' compensation. Board members should represent stakeholders and not

groups which may not fully understand the complexity of the administration of the workers' compensation.

The provision of the chair of WCAT to sit on the board seems, in our opinion, to hamper the review of policies as provided in section 93. The board of directors has a financial responsibility but cannot control the directions given by the minister and therefore may not be able to control the expenditures for which they are supposedly responsible.

On vocational rehabilitation and reinstatement: It is unfortunate that the notion of confrontation has been introduced into this already complex process. Section 51 requires that a worker must consent to the release of medical information. As you will see in our submission, the vast majority of workers wish to be reinstated. Section 51 will only assist those workers—and I would like to emphasize—the very few workers who may wish to abuse the system. This is in relation to the employer reinstating the employee and not necessarily the original employer.

The absence of vital medical information will create difficulties for employers in their attempt to reinstate workers. These difficulties may well be considered failure to cooperate with the possible penalties provided for the employer.

The experience rating system: The introduction of incentive systems is one that has been recognized as effective by most jurisdictions in Canada. The NEER program and CAD-7 are no longer an experiment; they have reduced accidents by some 30% since 1989 and have reduced costs, both being what incentive programs are supposed to accomplish. Replacing this with an audit system which only can be seen as punitive, like the voc rehab and reinstatement programs, will be another retrograde and confrontational process.

The purpose clause: Rather than being a statement which would guide the future of the board by establishing clear guidelines and responsibilities, the clause simply adds to the uncertainty by raising more questions such as: What is fair and who decides? Will medical services be defined and respected, particularly nowadays when even OHIP is trying to redefine its function? And who will interpret what are reasonable efforts to reinstate workers?

As far as mediation is concerned, to be successful, mediation should be voluntary. Not only is the mediation process flawed in this respect, but two areas of great concern to employers are excluded: section 65.1 which prevents the examination of ministerial decrees and subsection 51(2) where the workers fail to participate in their reinstatement process by refusing information that could be vital.

I would like to ask Madeleine to expand a bit on the reinstatement process.

Ms Madeleine Meilleur: I wanted to address the mediation process. I think that same question was asked before, if the mediation should be done before a first decision or after. I can tell you that by experience in another board which our company had some dealings, there is this process for the past two years and it's very successful and it's done after the first decision. The

mediator called the party and asked them if they want mediation and suggested why they should have mediation, but it's on a voluntary basis; it's not forced to the individual and it's very successful. I could say that 50% to 70% of cases are settled at mediation. It's a very successful process and I applaud this proposal.

Mr Bordeleau: In conclusion, I would like to say that Bill 165, like some of the other legislation before, attempts to patch up some of the deficiencies in the workers' compensation. However, I think it has created more holes than it's patched. In doing that, I think the increase of \$3 billion in the unfunded liabilities is portrayed as an improvement through some creative accounting, I presume.

Our recommendation is that Bill 165 be withdrawn and leave the full restructuring of the Workers' Compensation Act to the royal commission, because we believe that changing the act so close to the royal commission sitting may cause these changes to be viewed as sacrosanct and not up for grabs in the changes proposed.

In the interim, we suggest that the members of the board, where there are vacancies, should be appointed even if it's on a temporary basis to make sure that the employers are properly represented on the board. I would also like to say that the Employers' Advocacy Council has in the past participated actively in drafting suggested recommendations for the board and we are certainly prepared to work with any group that has a better system at heart.

I'd like to thank you all for your time to listen to our presentation. As the next portion of this is a question period, I would like to ask a few questions myself, perhaps rhetorically, but nevertheless—one is why is it so urgent that Bill 165 be passed now when we're on the eve of a royal commission fully studying the situation? Why the extraordinary powers vested in the minister? I heard prior comments that it might be to oversee the board during the interim period; however, I don't see the wording in there which would cause us to believe that this interim period would be to resolve impasses or anything of the sort which would give it some credibility.

Why is the cooperation only in one direction? The failure to cooperate obviously appears to be a penalty only to employers. Why can't employers have all the necessary information they require for reinstating workers? Why were the recommendations of PLMAC ignored, in large part?

1700

Mr Offer: Thank you for your presentation. There are two areas that I'd like to touch upon, and the first would be the issue of the purpose clause. I'd just like to indicate that I take it from your presentation that the purpose clause requires some fixing, in that there is not the financial accountability or responsibility aspect in it that you feel should be in it.

Mr Bordeleau: That is correct.

Mr Offer: Now, on April 21, the Premier of Ontario wrote to the Employers' Council on Workers' Compensation, and in that letter he said, "A purpose clause will be added to the Workers' Compensation Act which will

ensure that the WCB provides its services in a context of financial responsibility." It goes on to say, "This clause will also address the principles of fair compensation and benefits for workers, as well as enhanced rehabilitation and return to work." Would you be agreeable that the government amend the legislation so that it will comply with the words of the Premier of Ontario?

Mr Bordeleau: I believe the Premier was going in the right direction in having a companion clause with the direction and the financial responsibility to go with it. As most employers obviously have responsibilities, they also have financial accountability for their decisions.

Mr Offer: My last question deals with the board of directors and the interrelationship between the chair of WCAT. Section 58, as I think you have quite rightly pointed out, provides or sets a financial responsibility and an accountability to the board of directors. The question is, how does that interrelate with WCAT, which can, on appeal, make some far-ranging, far-reaching decisions? Is it your opinion that the present wording of the legislation does not include WCAT in the financial responsibility, section 58?

Mr Bordeleau: Our contention, as stated, is that it's a missed opportunity to further explain the responsibility of WCAT, because it is in fact creating policies and financial burdens, without the responsibility to balance the books and to respond to another authority as to the nature of its work.

Mr Offer: We have asked the government to provide information to the committee as to whether WCAT is within the financial accountability of section 58.

Mr David Johnson: Thank you for your deputation. The best I can do in terms of answering your five questions is, I think we all agree that the workers' compensation system is in urgent need of overhaul, but obviously we are agreed that it's not this overhaul that it needs. So in that sense I don't believe this is urgent at all.

Your second question is on the powers of the minister. Frankly, you'd have to ask the government. As a matter of fact, you'd have to ask the government on all four of the last questions, because our position would certainly differ from the government's position. I can't explain their rationale, but I agree with the intent of your question on them.

In terms of your brief, you've mentioned the replacement of the experience rating system with what you call an audit system, which I think is an appropriate term, and indicated that it would be retrograde and confrontational. I wonder if you would expand on that. You really didn't have much opportunity during your brief.

Mr Bordeleau: The NEER program or the CAD-7 was designed as a carrot in encouraging employers to provide a safer work environment and reduce the overall costs to the board. Obviously, in the haste to return money to some employers, overpayments, if we can call it that—and I think the previous speaker alluded to that—did occur.

I think an incentive program is always better than threats; however, I think Lotto 649 doesn't give out more

money than it takes in, so there would have to be some way of ensuring that the rebate to good employers is based on real performance, and as stated by the previous speaker, if there is very little work, obviously the experience rating of accidents is going to improve. But that should be tied in to hours of work or some real connection between the exposure to injury and the savings that are accrued.

So the incentive program should be real in terms of what it is rewarding. As far as the audit principle is concerned, if it's not a reward system, then obviously it has to be someone who goes about auditing employers to find fault and probably assess penalties, because that's the only thing that is left.

Mr David Johnson: That's not a very good system.

Mr Fletcher: Thank you for your presentation. I'm just reading from the last page, the last sentence in fact, about your suggestions: "Their intent is to reduce costs, introduce fairness, while ensuring that workers and employers are treated in a fair and equitable manner." I'm just wondering, what is a fair and equitable manner of compensation for an injured worker as far as the Employers' Advocacy Council is concerned? Is it 100%, 90%, 80%, 70%, 50%?

Mr Bordeleau: The numbers game is played across the country and there are various jurisdictions that employ different numbers. I don't think the number in itself is significant unless it's tied in to all of the other items that go along with it. So I don't think that you can just change the 90% to 80% and that's going to fix something or other.

I think being fair to people is to ensure that they do not suffer unduly, that they can look after their families and all of those things that everybody believes to be fair. The equitable portion of it is that the employer must be in a position to actually be able to do that and not simply being apparently fair to the employee while the employer is going broke trying to meet the increasing cost of doing business. So "fair" has to be fair for both and equitable for both to make sure that the employee has a place to go to work and, secondly, that if there is an injury, then that person should be looked after in a proper way.

Mr Fletcher: I think that's one of the answers why Bill 165 is so important and so urgent.

The Vice-Chair: Ms Murdock, can you answer the five questions in a minute?

Ms Murdock: Well, the five questions in a minute?

Why now before the royal commission? I think that, reality speaking, once the royal commission is set up, it'll have an 18-month mandate, as far as I know. By the time those recommendations come forward and then the government utilizes those recommendations or determines which ones, you're looking at, I would say, at least four or five years down the road. So the reality is that the board has status quo. I think every group—management, labour, injured workers—agrees that the status quo at the board is just not acceptable and I don't think they want to wait four or five years, operating under this existing system.

Why powers with the minister for the one year? I think

it's self-explanatory, and if you were in the previous employers' presentation, I explained at that time that the BC group found that it took over a year for their board, when they put management and labour together, to work out protocols as to how to deal with non-consensual decisions, so somebody has to be in charge.

You see, we fundamentally disagree that we didn't follow the PLMAC agreement. There were four areas out of that accord of March 10 where both labour and management said, "We can't come to an agreement so we'll leave it to the government," and we made a decision as a government. I won't have time to tell you what those four areas are, I know he's going to cut me off, but I'll be happy to go out in the hall with you and I'll show you.

The Vice-Chair: On behalf of this committee, I'd like to thank the Employers' Advocacy Council for bringing their presentation to this committee this afternoon.

Ms Meilleur: Mr Chair, I have a last word to say, and it's regarding perhaps not the structure of the board of directors but the composition. As a woman, I cannot miss the opportunity to say that we need fair representation on the board of directors. I was shocked the last time I looked at the picture of the board: 16 members and one woman. So I hope that the women will be fairly represented on the board of directors.

Ms Murdock: You're the first one and the only one who's mentioned it.

The Vice-Chair: Thank you very much.
1710

CANADIAN LABOUR CONGRESS

The Vice-Chair: I'd like to call forward our next presenters, from the Canadian Labour Congress. Good afternoon and welcome to the committee.

Mr Dick Martin: I'm Dick Martin, secretary-treasurer of the Canadian Labour Congress. I'm accompanied by Ms Amber Hockin-Jefferson, who is the national representative for our safety and health department in the Canadian Labour Congress and responsible also for the workers' compensation subcommittee.

I'm not going to go through all of what the Canadian Labour Congress represents, except to say that we have 2.3 million members. We cover workers and represent workers from coast to coast in the country and are reasonably familiar with basically all the workers' compensation programs of every province since our national reps and field reps work with the respective federations of labour on those workers' compensation schemes and so are very much involved.

I might say, in a presentation of 20 minutes it's going to be rather difficult to go through all of the bill but we will try to be as concise and precise as possible. I'm sure that you've heard many of the arguments we will be making, or you will hear them, I might say, in future hearings across the province. That is because in fact the problems facing workers dealing with compensation systems are indeed well known. They are encountered all too frequently by workers claiming due benefits, only to be faced by companies trying to lower their assessments by fighting these claims tooth and nail.

Attached as an appendix is a comprehensive document entitled the Canadian Labour Congress National Policy Position on Workers' Compensation in Canada, which outlines all the elements that a workers' compensation system should contain. I might add, that policy was developed—it took well over a year—in consultation with our members from coast to coast: those who sat on workers' compensation boards, those who are active in our occupational health and safety committees and indeed injured workers across the country. It was endorsed by all the affiliated unions of the Canadian Labour Congress and represents a complete compensation package. I highly recommend that the members of the committee spend some time reviewing its recommendations.

We'd like to look at what is usually referred to as the "historic compromise" upon which the compensation system is based. In the early 1900s, a system was devised whereby injured workers would give up their legal right to sue employers for injuries suffered in the course of their employment, and in return, the employers of the province of Ontario would set up a no-fault compensation system which would make workers whole in financial terms when they were not whole in physical terms. This no-fault system was not to be based on decisions of the courts or proving in an adversarial system that the worker was qualified for benefits.

I might even add that many of you will be aware that April 28 each year is a national day of mourning in recognition of workers injured and killed on the job. That's based on the first reading of the workers' compensation system to be introduced in the province of Ontario, and I believe the year was 1914.

However, unfortunately it is an adversarial system that has evolved and that was exacerbated and is exacerbated by experience rating. Companies now either fight compensation claims or they try to convince or pressure workers into not filing claims in the first place. Inducements such as light duties are used to encourage under-reporting. The employer is rewarded by the experience rating system for hiding claims. They are also rewarded for challenging entitlement decisions and appealing claims. Of course, the worker is still not entitled to go to the courts in order to obtain payment or to sue a negligent employer. The erosion of the system has been all one way: in favour of employers.

The other major fault of the experience rating system is the lack of any penalty for employers arising from claims due to occupational disease. If employers are not financially penalized for poor industrial hygiene, they have no incentive to clean up their production processes. In a society where the bottom line is the only criterion, the employer will only begin to exercise sound industrial hygiene practices when it becomes an economic necessity. In other words, when it becomes cheaper to clean it up than to pay the compensation costs, then they'll be cleaned up. The only way this will ever happen is to make employers more fully financially responsible for the occupational diseases and injuries that they cause.

This will also ease, to some terms, the financial strain on the medicare system, which currently bears the costs of many of these illnesses. The CLC suspects that the

costs to the health care system for work-related injuries and diseases are enormous.

In cases where employers are successful in deterring workers from filing claims, any medical attention required comes directly from OHIP. In cases where workers are reinjured or have a recurrence of unreported symptoms, the public system once again foots the bill. In cases of occupational illness, of which very few are compensated, the sick worker is cared for totally out of the medicare budget and not out of the workers' compensation funding. This provides no incentives for employers to look at their plants with a view to improving industrial hygiene.

One of the most serious and largely unreported charges to health care is occupational cancer. Few of these are accepted by compensation boards, even though the very conservative estimate of the Canadian Cancer Society states that nearly 10% of all cancers are contracted as a result of occupational exposure. A recent study by the National Cancer Institute in the United States estimates that 20% to 40% of all cancer is caused by substances in the workplace. Even working with 10% to 20%, this is an enormous number and a tremendous cost to the health care system. If employers were charged for the damage that they are causing, I am sure they would find a way to improve their operations. The bill paid by the health care system for occupational diseases must at least be partly responsible for the crisis in medical funding which exists in the country today.

The CLC has a number of comments on specific changes proposed in Bill 165.

Subsection 1(1): We support the change of the term "industrial disease" to "occupational disease," both here and in later sections, as a number of workers outside of the industrial workplace suffer from occupational diseases.

Section 43: We are disappointed to see no proposal to restrict the Workers' Compensation Board's practice of deeming. The practice of deeming, whereby the board determines that a worker could work at a non-existent job and then deducts this portion from the worker's future earnings loss pension calculation is indeed a great injustice.

We recommend that section 43, which incorporates the practice of deeming, be revoked. If a worker turns down a real job, not a job that does not exist in the job market but that the board feels that the worker could somehow procure, then that case should be able to be considered in the calculation of future earnings loss.

Section 51: The CLC has a great deal of concern with the proposed subsection 51(2) which provides for the release of medical information. Why should an employer who has not implemented a cooperative return-to-work program have access to a worker's medical information? The doctor-patient relationship should not be violated by the release of information to third parties who are not entitled to this information. A physician should feel comfortable that any information provided is used to aid in the recovery of the worker and that it is to be used primarily to aid the workplace accommodation of any impairment suffered by the worker and that this accom-

modation has been approved by the Workers' Compensation Board.

Section 53: The CLC is concerned that subsections 53(1), (2.1), (3), (9) and (10) divide the responsibility for vocational rehabilitation between the board and the employer, whereas it now rests with the employer. It is our opinion that workers and their unions should work with the board to develop an appropriate vocational rehabilitation program.

We are also concerned with the proposed change to subsection (12) and would suggest that the present mandatory requirement for the board to provide assistance to workers who are seeking new employment be maintained. We recommend the word "shall" be retained in place of the proposed "may."

Section 54: This section attempts to address the question of the return to work by injured workers, the idea being that there will not be large groups of workers with disabilities who are unemployed in the future. The strengthened and streamlined return-to-work and rehabilitation provisions, along with increased penalties for non-cooperation, will indeed assist in safe and timely re-employment of injured workers. The CLC is of the opinion that measures such as these are a far better way to tackle the problem of unfunded liability, rather than denying due benefits to eligible workers.

1720

Section 56: We support the proposal to create a bipartite board of directors. Ownership of the compensation system must be turned over to the two parties, labour and business, who have a stake in the system. Each party must have equal voice and vote in the operation of the WCB. Only then will decisions reflect the reality of the workplace and meet the needs of the workers and the employers as well.

Section 58: We are opposed to the proposal in subsection 58(1) requiring the board of directors to "act in a financially responsible and accountable manner in exercising its powers and performing its duties." It's assumed that they're going to do something like that; they don't have to put it in and direct them to do it. This subsection will be used by the employers at every opportunity to frustrate the entitlement of injured workers and to narrow the board's claims policies and procedures. The end result of this section will be further reductions in benefit entitlements to injured workers. We strongly recommend that the proposed section be deleted.

The CLC, in section 147, supports the proposal that would allow many permanently injured workers who exist on small pensions to receive an increase of \$200 per month. However, we believe there will be many injured workers who require but do not qualify for this increase because the qualifying requirements are tied to the supplementary payment award. We would suggest that a clause be added which allows the board to determine if other workers are receiving an adequate partial disability award and, if not, allow the board to take action to rectify this situation.

In section 148, the new inflation protection formula does not require the 4% cap that Bill 165 applies in

subsection 148(1). The original Friedland formula was designed for pension funds and did not have any cap on the maximum increase the formula could provide. The CLC views this as a regressive proposal of de-indexing which could take billions of dollars away from the incomes of injured workers.

It strikes at the very fabric of the historic compromise for which workers' compensation was designed. Workers are prohibited from suing their employers, but in turn are to be provided with fair restitution for injuries and diseases caused by the workplace. Section 148 and the Friedland formula restrict that restitution due to injured workers beyond what is reasonable or fair. It provides employers with yet another means to escape their obligation to fully fund Ontario's workers' compensation system—to the extent, some have calculated, of projected savings of up to \$27 billion. The CLC objects to this section in the strongest possible terms and requests that the present section be maintained.

There are numerous problems with the Workers' Compensation Board system which require immediate attention, and Bill 165 goes some way to redress some of those concerns the labour movement has had for many years. However, Bill 165 does not deal with some of the largest issues which are of fundamental importance in bringing the WCB into the 21st century.

Some of these fundamental issues are coverage (who is included and excluded), entitlement to benefits, occupational disease, the question of universal disability programs, benefit levels, indexing, financing, and the relationship between the board and various other programs. These issues have been crying out for review for many years now but resources have not been committed to their examination.

The CLC welcomes the establishment of the royal commission to study the entire system and to deal with these larger questions. Indeed, the compensation system of the future may be much different than the present system. There may be many changes which can and should be made to the benefit of injured workers and to control the unfunded liability of the board. We have made many suggestions over the years which would result in both better benefits for workers and less expense to the system by improving health and safety and the return-to-work procedures.

It is readily apparent that major changes in the system will not come about without a detailed look at the present setup with all its good and bad features. We believe the only inquiry mechanism which will have the authority and the ability to examine the organization in depth is a royal commission, and we urge the government to waste no time in implementing it.

I'd go on, but I see I'm running somewhat out of time and want to leave the members of the committee time to answer questions. We have run into a diatribe about the chamber of commerce, which is well deserved by the chamber of commerce. I would recommend that everybody read it—some good wisdom—and maybe the chamber can straighten out its ways.

With that submission, I am prepared to answer questions by the members of the committee.

Mr David Johnson: I just noted that you seem to point out quite a number of criticisms of the bill in its present form, yet you support the bill?

Mr Martin: We support the bill with the amendments that we put forward.

Mr David Johnson: I asked this question of somebody this morning. If you were sitting here in this position—you might be sitting over there, more likely—and voting on the bill the way it is right now, would you vote for it or against it?

Interjection.

Mr Martin: If I was sitting there, you'd take a picture? Well, you're not going to get a picture; I can assure you of that.

The answer is we'd probably vote for the bill.

Mr David Johnson: You'd vote for it even with all the criticisms?

Mr Martin: Yes. In balance, it's going in the correct direction, but obviously in making this presentation we would hope the committee would see its way to pass the bill with the desired amendments.

Mr David Johnson: When you're talking about the chamber of commerce, one of the criticisms I think you have is about their concern about the unfunded liability. You are against the Friedland formula. Some of the things that you're recommending would add to the cost of the workers' compensation system. I guess what I'm trying to get my mind around is, where is this money going to come from? How are we going to pay for this? The injured workers deserve to have protection, and yet where is the money going to come from when already there's a huge unfunded liability? I mean, I have great concern for the future.

Mr Martin: I think, first of all, the last part of your question, the unfunded liability is something like the great debate around the national deficit. Indeed, it is money that is going to be owed, but it is not owed right now, it's not owed in the immediate future, and really to some degree it's an accounting feature that you may or may not disagree with. I've had a lot of experience with actuaries and I've had actuarial reports given to me that would differ literally in the tens of millions of dollars if you did it in this way in terms of calculating that percentage and put that amount of premiums into it.

I would say to you, though, in fairness, there are going to be two places where the money is going to come from. There can be great savings. I repeat—we're like a broken record on this—clean up the workplaces so there are less claims. That's the number one place to do it in terms of making sure there are not going to be further claims on the compensation system.

The second one is what we applied and the commission applies to the bill: trying to get a speedier return to work of injured workers. That really is very important, and if there's some cooperation and dedication by all concerned, mainly employers, they will get off the workers' comp system and you will have less money that has to be paid out.

The final part is that premiums have to be paying the system. Ontario's not the only place, but the fact is that

employers have underpaid in terms of the premiums for workers' compensation. I see you frowning, but the fact of the matter is that if you went and took a look at the United States, where they have a great private enterprise insurance system in, they pay premiums way beyond what any Workers' Compensation Board in Canada pays. So I would say to you premiums, and pay their fair share.

Mr Robert Frankford (Scarborough East): I was interested in your comments about occupational diseases and other types of injuries. I speak with some interest because I am a physician and I've had to deal with this.

Just as perhaps a thought for you to comment on, should we be looking perhaps at making the actual clinical care something which is all part of the medicare system? Because frankly it's not that easy in the regular run of things. I don't think physicians are primarily thinking in terms of the underlying cause, although I certainly hope they don't neglect it overall, and I think there's plenty of opportunity to have that advocacy role with that physician or through unions and the whole sector that we're talking about here. Would you have any thoughts on that?

Mr Martin: In terms of political, I understand that most of the time we're reactive. I assume that when a patient comes into a doctor's office, your first thought is, "How am I going to cure him or her and take care of this particular disease?" We have insisted for years that the prevention side of things is not looked at closely enough. Over the years I think a general system has been developed that is reasonable in terms of prevention of accidents: Wear your safety belts, have proper stairs and such like that. But in terms of addressing ourselves to the prevention of occupational disease, I think we are far, far lacking in it.

1730

We've only used cancer as one area. It took us years and years and years of appeals for the cases of asbestos, for example, to be rewarded in terms of workers' compensation. It was a big fight. It was clear what was causing it, but we couldn't get the—it was a problem of cause and one of treatment. It was the same thing with silicosis. I came out of the mining industry and silicosis was a case in point. For heaven's sake, it was generally accepted what was causing it, but we could never get it through the workers' compensation system. So literally tens of thousands of miners died horrible deaths because there wasn't a prevention side. It was basically caused by drilling dry, so to speak, with rock dust in the air.

So in terms of the medical profession in particular, we believe there should be a lot more education of what is happening in factories and mines and offices and such in terms of cause. They simply aren't taught in school, as far as we can determine, many times.

The second part that we think has been a big advance is the occupational health and safety clinics that have been established in the province of Ontario and in the province of Manitoba, and to some degree in the province of Alberta. We think they go a long way to helping advocacy in terms of cleaning up the workplace and in fact will help the employers in the long run reduce their premiums.

Mr Offer: Thank you for your presentation. I just want to be very brief in terms of my question. I want to go to your national policy position, which you've been so kind to provide. On page 7 you say—it's your first recommendation, the first recommendation of the Canadian Labour Congress—that the historic compromise on workers' compensation needs to be restored and refined. On page 6 of your presentation, talking about the Friedland formula, you say that "strikes at the very fabric of the 'historic compromise' for which workers' compensation was designed."

My question very simply is, if the government does not remove the Friedland formula, which you have said strikes at the very fabric of the historic compromise of workers' compensation, is the Canadian Labour Congress still in favour of this bill?

Mr Martin: Well, it's similar to your fellow member's question. We want Bill 165 passed with the amendments that we're suggesting to it. Otherwise, we would come here and just say, "Pass 165" or "Defeat 165." We think that it has merits to it. I've been asked the question: On the balance, is it a good bill? I would say to you that it's not a bad bill, but it could be an awful lot better if a lot of the amendments were made.

Mrs Fawcett: I'd like to continue with that recommendation where you say in particular that workers' compensation boards need to be independent of government and be composed of equal numbers of representatives of the two parties of direct interest, labour and business. I would suggest from all of the groups of injured workers that we have heard since I've been on this committee, why would it not be the three interests and injured workers be included on the Workers' Compensation Board? Because then I think we would get real balance and we would get their input directly because they're right on the board.

Mr Martin: In answer to you, I don't have strong objections to that, but the fact is that we represent tens of thousands of injured workers who are coming through our union offices, our occupational health centres. We work very closely with the injured workers' groups. But we don't have any big, violent opposition to having them involved. It just sometimes gets a little awkward when you get into a three system in terms of the representation and the guidance of the administration of the Workers' Compensation Board.

I guess my point is, we do represent an awful lot of workers.

Mrs Fawcett: I would like to see a few others represented on that board too, like the medical professions as well.

Mr Martin: Well, don't get too wild about that. You might be in trouble.

The Vice-Chair: On behalf of the committee, I'd like to thank the Canadian Labour Congress for bringing us their presentation this afternoon.

COMMUNICATIONS, ENERGY AND
PAPERWORKERS UNION OF CANADA

The Vice-Chair: I'd like to call forward our final presenters for the afternoon, the Communications, Energy

and Paperworkers Union of Canada. Could we have some order in the committee room, please. Order, please.

Good afternoon and welcome to the committee. Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate you leaving a little time for questions and comments. As soon as you're ready, could you please identify yourself for the record and then proceed.

Mr Fred Pomeroy: Dick Martin and his colleague are a hard presentation to follow. My name is Fred Pomeroy. I am a member of the PLMAC and was involved in the discussions that led to the development of Bill 165.

I'm also executive vice-president and treasurer of the Communications, Energy and Paperworkers Union, which was formed in November 1992 by the merger of three major Canadian unions. With approximately 140,000 women and men in 645 local unions, we're one of the largest private-sector unions in Canada. Occupational health and safety and the fair treatment of injured workers are subjects of high priority for us, and we welcome this opportunity to comment on the amendments to legislation in these areas as proposed in Bill 165.

The average annual number of workplace fatalities since 1980 recognized by the Ontario Workers' Compensation Board is about 250. This number is generally believed to be a gross underestimate, for several reasons.

Fatalities are underreported by workers and employers. Often an occupational fatality is not identified as such. For example, road accidents and acts of violence in the workplace are sometimes not recognized as occupational deaths, and doctors have difficulty recognizing the occupational origin of many diseases.

Once reported, a fatality has to be accepted or recognized by the WCB to be counted in the statistics. The Canadian Centre for Occupational Health and Safety, in its Statistics Infogram 02, points out as an example that only about 77% of claims for fatalities were accepted by the Ontario WCB in 1987. No one can say exactly how many people die of fatal work injuries and illnesses each year. In addition, there are a large number of workers whose work is exempt from WCB coverage, an estimated 700,000 Ontario workers whose injuries are neither recorded nor compensated.

Workers' compensation statistics in general recognize workplace deaths that are immediate and obvious. Deaths due to illnesses that have an occupational origin are rarely recognized. In 1992, a national task force using the working title Canada 2000: Strategies for Cancer Control in Canada concluded that occupations are the cause of 9% of all cancer deaths in Canada. This estimate was based on work done for them by a Dr A. Miller, the department of biostatistics, University of Toronto. The 9% estimate is now generally accepted in Canada. Since about 60,000 people die of cancer per year in Canada, that means that occupationally induced cancer alone would account for 5,400 workers' deaths per year. Based on its share of the Canadian workforce, Ontario may account for over 2,000 of these deaths.

There are a host of other occupational diseases, ranging from asbestosis and asthma to destruction of the liver,

kidneys, immune system or nervous system, that are virtually impossible to estimate. It's therefore quite easy to believe that several thousand Ontarians die as a result of their work each year. The true number may well be as high as 6,000 Ontario workers per year, as estimated by Dr A. Yassi for the Weiler inquiry into Ontario's WCB.

As for injury statistics, the average number of workplace injury claims per year since 1980 recognized by the Ontario Workers' Compensation Board is 419,134. Although over 400,000 injuries a year may seem like a staggering number, this again is an underestimate, since it counts only those reported to and accepted by the WCB. Underreporting and underacceptance is a problem for injury statistics, just as it is for fatality statistics.

Sociologists S. Brickey and K. Grant of the University of Manitoba, attempting to find out the true rates of occupational injury and illness, found an injury rate of 18.7% of the workforce in 1990. They used surveys to obtain their figures. If their findings indicate a national pattern, and given an Ontario labour force of over 4,400,000 workers, there could be an injury total in the province of over 822,800 workers annually.

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Full-time employment involves about 50 weeks per year with 40 hours per working week. There are 3,600 seconds in an hour, so that means about 7,200,000 working seconds per person per year. Dividing this total by the official injury number of 420,000 per year, it can be seen that there is an occupational injury in Ontario every 17.2 seconds of every working day. If, as Brickey and Grant suggest, the true rate is about double the official rate, there is a workplace injury in Ontario every 8.8 seconds of every working day.

Examining numbers such as these makes it apparent that whatever is done to reform the Workers' Compensation Act and the Occupational Health and Safety Act must place the interests of these unfortunate victims first and foremost. It must be remembered that behind every one of those statistics stands thousands of human beings, individuals whose only crime was to try and earn a living.

The changes proposed in Bill 165 must be seen in this light. Although many serious and immediate problems with the Ontario WCB are addressed in this bill, many broader problems are not, issues such as coverage, entitlement, occupational disease, benefit levels, indexing and the board's relationship to other programs or the possibility of a universal disability insurance system. Indeed, the most important aspect of the introduction of Bill 165 in the Legislature may have been the concurrent announcement of a royal commission to study the system. We welcome this announcement and hope that its report will form the basis of a system which will look quite different than the one we know today.

Dealing with board administration and finances, a bipartite board of directors will give the two parties who have a direct stake in its operations an equal say in the board's administration and policy direction. Workers and employers will have the opportunity to make decisions that reflect the real needs of the workplace. This will reduce the interference in the board's daily affairs that

governments have made directly or indirectly through government appointments to the WCB board of directors. We support this change and believe that it will result in a more efficient and effective WCB through improved decision-making.

The subject of WCB finances cannot be ignored. We refute claims that the board is on the verge of financial collapse and that the number one issue is the so-called unfunded liability question. While not trivialising the question of financing the compensation system now and into the future, it should be noted that reserve assets as a percentage of liabilities have improved from 32% in 1984 to 37% today. Improvements in occupational health and safety, re-employment and rehabilitation programs will further increase this ratio. It is projected that the funding ratio will rise to 55% of liabilities by the year 2014 with Bill 165.

Some employers have argued that the fact that there is any unfunded liability at all is a major problem. They like to use inflated future dollars rather than funding ratios in their statements in order to make it sound as though the WCB's finances are in a state of crisis.

There is no logical reason why the WCB system should be fully funded against all future liabilities in current dollars. The Ontario Federation of Labour has proposed a standard whereby the WCB would operate based on a balance between current revenues and current expenditures, with reserve assets equalling 50% of future liabilities. This is akin to a householder who is able to meet all monthly payments and at the same time keep a sizeable reserve in the bank. We don't require people to have sufficient funding on hand to be able to finance all of their future mortgage payments before allowing them to buy a house, yet that is precisely what we would require of home buyers if we accept the logic of the unfunded liability doomsayers. And even this is not a fair comparison for the WCB, since operating in this manner does not require it to borrow any money whatsoever.

Of course, funding could be dramatically increased by policing employers who cheat on their payments or escape registering altogether and by bringing presently excluded sectors into the system. Oddly, this is never suggested by the alarmist employers. Their goal is the reduction or elimination of benefits to the very people whose health and strength have suffered and rely on them.

On inflation protection, Bill 165 offers an increase of \$200 per month to the lifetime pensions of disabled workers who are unemployed and who were injured prior to 1990. The same increase should be extended to a small group of workers who were over 65 years of age when Bill 162 was passed and subsection 147(4) was included in the Workers' Compensation Act. These workers, who are all over 70, need and deserve this increase.

A system of inflation protection for workers who now receive a WCB disability pension and who have returned to work, known as the Friedland formula, was negotiated by business and labour in the development of Bill 165. As such, it was part of an overall compromise. However, in spite of the agreement, we're not happy with the Friedland formula as it will erode the pensions of this

group of injured workers. Especially for younger injured workers, the economic loss due to the Friedland formula can be severe in times of high inflation and will hurt them for a lifetime. Since the WCB's income is inflation-protected, as it's tied to wages, the 4% cap is unnecessary and unjustified.

On re-employment, despite the existing obligation to re-employ injured workers, 78% of workers who have been away from work for one year, and are therefore eligible to be considered for a future economic loss award, remain unemployed. The unemployment rate for people with disabilities is 40%. The WCB's deeming process continues to threaten these workers with major income reductions.

Bill 165 improves and streamlines return-to-work and rehabilitation provisions. These provisions should help injured workers with disabilities to re-enter the workforce in a timely and safe manner. Along with increased penalties for non-cooperation, these provisions will improve the finances of the WCB, while offering injured workers the dignity of employment and a better quality of life.

On medical information, subsection 51(2) of Bill 165 raises the question of the potential misuse of confidential medical information. Doctors should not be required to share information with employers who may be uncooperative with respect to re-employment programs and have not implemented such a program. Potentially, this provision will create a situation where threats and coercion will replace the cooperation necessary for a successful return to work.

Only when medical information is necessary to help the worker's recovery and to make appropriate adjustments to the work or the workplace in the context of a WCB-approved re-employment program should it be made available to employers. Even then, the medical profession should provide only information that is necessary and useful for these purposes, not, for example, general diagnostic information.

Experience rating: The present system of experience rating rewards employers who challenge entitlement decisions, appeal claims and hide claims. Changes to the experience rating system will reduce the ability of unscrupulous employers to hide their problems by bringing injured workers back to the workplace using threats and coercion or by fighting, as a matter of course, every claim.

An audit system augmenting experience rating will start to reward employers who honestly and accurately report workplace injuries while making genuine efforts to improve or maintain good occupational health and safety standards. The existing system rewards confrontation and intimidation. Labour has long believed that a workplace where the employees are well represented by a strong union and where there's genuine commitment to health and safety on the part of the employer and where employees are well trained in hazard identification and where best practices are the norm may have a larger number of reported incidents than an employer who is a marginal performer in the field of workplace health and safety but is unscrupulous about reporting practices and

combative before the board. Meanwhile, the bad employer may be earning lower WCB rates by artificially maintaining good performance statistics. This change will therefore encourage occupational health and safety and the adoption of best practices benefiting all Ontarians.

1750

We have some miscellaneous comments that cover other concerns with Bill 165, which include whether subsection 8(7.1) eliminates the value of private disability insurance; whether subsections 53(10) and (13) allow uncooperative employers to interfere in rehabilitation programs; and whether subsection 95(6) assumes an achievable level of independence on the part of the Industrial Disease Standards Panel.

On the business-labour agreement of the PLMAC, the question is, does Bill 165 address some of the more pressing problems in the WCB system? As a member of the Premier's Labour-Management Advisory Committee, which negotiated the agreement that spawned this bill, I can say that it addresses the main concerns which business and labour brought to the bargaining table last March. Contrary to much of the hysteria we've seen in the media and at this committee's hearings, Bill 165 closely mirrors the business-labour agreement negotiated by the PLMAC. Attached to our brief is a comparison of the PLMAC agreement and Bill 165, as appendix B. If you have an opportunity to read it, you'll find it includes a lot of give and take by both sides.

Although the legislation's drafters worked hard to mirror the PLMAC agreement, they have made some serious mistakes in the legislative language which results in the intent of certain amendments being defeated by the way in which they are written. We have attached an appendix A with some suggested amendments in 10 clauses, because there's not enough time to go into them in the 10 minutes allotted today.

In conclusion, too many workers with disabilities live in poverty. The scope of workplace injury and death is consistently underestimated, as is the human suffering it represents. Our economy is changing and the sectors which traditionally fund the WCB are shrinking. The non-covered service sector, meanwhile, continues to grow, leaving 700,000 Ontario workers denied compensation coverage.

The Legislature should pass Bill 165 into law with amendments which clear up the intent of some of the clauses. Then we should begin the important work of a royal commission to rebuild the system so it will reflect the needs of our society in the future.

Thank you for this opportunity to present our views to the committee. I look forward to your questions.

Mr Fletcher: Thank you, Fred, for your presentation. Since you were on the PLMAC—I've heard from Gord Wilson and from yourself, who were members of the committee, that this Bill 165 closely mirrors the agreement. Then in London, Sault Ste Marie and today in Ottawa, business groups come in and say it's totally different from what was agreed upon. I'm trying to grasp where people are coming from. Was the agreement negotiated at the table with both sides finally coming out

and saying, "Yes, we can live with this," or did we deviate from what the committee had negotiated?

Mr Pomeroy: No, I don't think so. This was a process where you had a group of people get together and try to deal with a very complex set of problems and develop not a panacea for everything for the future.

Going into this process, there were a number of people who thought that we should just deal with it through a royal commission, the whole thing should be fed to a royal commission. When we had our discussions between business and labour, we agreed readily that there were just too many immediate problems that needed to be dealt with, so we would work on those and we put together a framework of understanding which I think is reflected in Bill 165, as it's presented here.

I haven't had the opportunity to tune in on all of the proceedings but I have watched some of them on television on occasion and, frankly, many of the people who are saying that it doesn't reflect it weren't around when we were having our discussions and weren't part of those discussions.

Mr Offer: Thank you for your presentation. Recognizing the shortness in time, on page 4, you speak about the funding and you talk about "escape registering altogether." The first presentation that we had today suggested that there be an amnesty for employers which otherwise should be into the system, because right now if they come forward there's a six-year penalty. I'm wondering if you would be in favour of that amnesty.

Secondly, the financial responsibility framework of the PLMAC, number III on your appendix B, says, "Business and labour have agreed that there be a financially responsible framework for decision-making and operation of the system." We have now been told by the government that the decisions by WCAT are outside of that. Was it not the intention that all decisions in and around the board would fall within a financially responsible framework, and shouldn't WCAT decisions also fall within that?

Mr Pomeroy: On your first question, I haven't actually had an opportunity to investigate what the ramifications would be of waiving that. It may have some merit, but I am not competent to comment on it.

On the second question, we're not talking about someone's small bank account here where every time you take 10 cents out of it, you make a calculation in your ledger and you can keep close track of it. We never discussed having WCAT fit into this on a day-to-day basis. Obviously, overall there has to be some financial responsibility and the board has to take that into account. But it would make the WCAT process meaningless if you were to say that they could never, ever come up with a decision that, for example, increased the cost that was envisioned by the WCB in any of its decisions.

It has to be a rolling process where the WCB is having to take into account, the board is having to take into account the fact that they're having cases that go to WCAT and are increasing the costs. It's not then a problem of WCAT being irresponsible necessarily, it may be a problem of the board not making the appropriate assessments in the first place.

Mr Carr: Thank you very much for your presentation. I'm a little bit discouraged when I—and not to ascribe any blame—see labour come in and business come in and we can't agree whether the unfunded is a problem. One says it is, one says it isn't, one says the committee did reflect in the bill, the other side says it doesn't. In the long term, we all suffer as a result of it. I wonder if there are days we could even agree what the day was. It's very discouraging.

I want to ask you a question about the bill as it stands. You talked about the poverty of the injured workers, as a result of the de-indexing. If that provision is still in the bill, would you like the bill to still pass?

Mr Pomeroy: Obviously, we're in favour of the bill. We've said that. That's a nice question, but we wouldn't have this process if you didn't want us to come and say, "Are there things that you think ought to be improved?" If that's the bottom line, we're not going to walk away from the bill and say, "No, we don't want it." We believe it reflects generally what we agreed to at the PLMAC and that the next step in the process is the royal commission review which hopefully will deal more extensively.

We believe that there are some urgent things that need to be done in the short run. Hopefully, you'd see clear to increase the Friedland.

The Vice-Chair: On behalf of this committee, I'd like to thank the Communications, Energy and Paperworkers Union of Canada for bringing us your presentation this afternoon.

Seeing no further business before the committee, we will stand adjourned until 2 pm, Tuesday, September 6.

The committee adjourned at 1759.



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Wood, Len (Cochrane North/-Nord ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Carr, Gary (Oakville South/-Sud PC) for Mr Turnbull

Fletcher, Derek (Guelph ND) for Mr Huget

Frankford, Robert (Scarborough East/-Est ND) for Mr Klopp

Johnson, David (Don Mills PC) for Mr Jordan

O'Neill, Yvonne (Ottawa-Rideau L) for Mr Conway

Wilson, Gary, (Kingston and The Islands/Kingston et Les Îles ND) for Mr Wood

Also taking part / Autres participants et participantes:

Cooper, Mike, parliamentary assistant to Minister of Labour

Jordan, Leo (Lanark-Renfrew PC)

Clerk / Greffière: Manikel, Tannis

Staff / Personnel: Richmond, Jerry, research officer, Legislative Research Service

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Troisième session, 35^e législature

Official Report of Debates (Hansard)

Tuesday 6 September 1994

Journal des débats (Hansard)

Mardi 6 septembre 1994

Standing committee on resources development

Workers' Compensation and
Occupational Health and Safety
Amendment Act, 1994

Comité permanent du développement des ressources

Loi de 1994 modifiant la Loi
sur les accidents du travail et la Loi
sur la santé et la sécurité au travail

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Tuesday 6 September 1994

Mardi 6 septembre 1994

*The committee met at 1417 in room 151.*WORKERS' COMPENSATION AND
OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL
ET LA LOI SUR LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

POWER WORKERS' UNION

The Vice-Chair (Mr Mike Cooper): I'd like to call forward our first presenter for the afternoon, from the Power Workers' Union. Will you please come forward. Good afternoon and welcome to the committee. Just a reminder, you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd keep your remarks somewhat briefer to allow time for questions and comments from each of the caucuses. Could you please identify yourself and then proceed.

Mr John Sarginson: My name is John Sarginson. I'm a staff officer with the Power Workers' Union.

We, as the Power Workers' Union, represent approximately 15,000 members province-wide. Our members work at Ontario Hydro, Dryden Hydro, Kenora Hydro, Whitby Hydro and Atomic Energy of Canada Ltd and their job classifications include operators, technicians and clerical.

After careful analysis of the contents of Bill 165, we have decided to support the proposed changes. The basis for our support is that the positive aspects of the bill, specifically the bipartite board, the royal commission, improved re-employment provisions and the \$200 increase to some 40,000 workers we believe represent significant improvements. It's also a step towards addressing the problem that thousand of injured workers are living on social assistance, paid for by the taxpayers instead of the companies who actually injured them.

The negative aspect of Bill 165, the clawback of benefits using the Friedland formula, we believe is an insult to injured workers. However, we believe it can be overcome if the companies and the corporations live up to the real intent of Bill 165, which is the prevention of accidents and true rehabilitative employment. If this happens, the Friedland formula will not be an issue, but if, as in the past, the companies and the corporations do not participate in true rehabilitation and re-employment,

the so-called Friedland formula will become a major issue for any future government.

We recognize that your committee has heard from all interested parties regarding their problems will Bill 165. We would prefer to concentrate the rest of our brief on rehabilitation and re-employment.

First, some history of our experiences with our major employer, Ontario Hydro.

Prior to 1989, injured workers had to be capable of returning to the full duties of his or her pre-injury job or returning to the full duties of a lower job within his or her trade family. In other words, there was no thought of modifying the job, reducing hours, amalgamating duties of various jobs to create a job that was within the injured worker's physical and psychological restrictions and no thought of retraining the injured worker who could not perform the full duties of an existing job. These workers were left on compensation until benefits expired and then placed on long-term disability—a total loss of years of experience and expertise to the company, to say nothing of the social and psychological impact on the injured workers and their families.

With the introduction of Bill 162, we convinced Ontario Hydro that its position was morally wrong for a crown corporation and made no business sense. The business argument was simple: Ontario Hydro, as a schedule 2 employer, has to pay the full cost of an injured worker, dollar for dollar, as paid for by the board, plus an administration fee and the cost of a replacement worker if in fact the injured worker did not return.

We identified the following advantages for the employer, Ontario Hydro, and the injured worker:

(1) The earlier an injured worker returned, even if initially to another job, the corporation saved money.

(2) If it was determined by the medical profession that an injured worker could return to his or her own job by modifying the job, again it could save money.

(3) If it was determined an injured worker could not return to his or her original job even with modifications, then the injured worker could be trained for a position within his or her physical restrictions, one which he or she found challenging, and again it could save money.

(4) If a worker could only return to part-time employment, it could save money, and

(5) If the employer continued to pay the worker his or her re-injury earnings, again it could save money.

At Ontario Hydro we negotiated a rehab and re-employment plan which we believe is second to none. A

joint team at the injured worker's location meets and develops a plan, with the injured worker being a full participant. The plan also includes provisions where an injured worker received number one priority for vacancies, regardless of seniority. The one exception to that is when we have surplus employees.

The success rate, prior to the massive restructuring of Ontario Hydro, was that over 85% of injured workers returned to the workplace.

Perhaps this plan works because Ontario Hydro is such a large corporation and is able to accommodate injured workers, but we do not believe that that is the main reason. We believe it is because they're a schedule 2 employer and consequently have to pay the full cost of the WCB payments plus an administration fee. It just makes good business sense to get injured workers off compensation and back to work as soon as they are cleared by their doctor. It also means that every reasonable effort is made to help maintain meaningful employment for injured workers.

Other companies and corporations who make millions of dollars' profit are claiming the board is out of control and it costs too much money. Why does it cost too much? We suggest it's because the companies are not interested in injured workers who cannot perform the full duties of their pre-injury job. It is far cheaper for those companies to let the board look after the injured workers, even if their premiums do increase slightly. Fact or fiction? We believe the figures speak for themselves because we know that prior to 1990 a minimum of 40,000 workers never returned to work and we know from the OFL brief that 78% of injured workers who have been out of work for one year remain unemployed. We must remember that Bill 162 was supposed to force companies to re-employ. It is obvious from those figures that those companies are not living up to their obligation.

We believe the solution is simple: Make all employers schedule 2, including the banks and the insurance companies and all of the so-called service groups that are now not covered. Then and only then will the companies rehabilitate and re-employ injured workers, because if they don't it will cost them the full price of benefits plus an administration fee of 10% to 18%. That way the board can never get into further debt; it will operate on an administration fee only.

What about the unfunded liability? We suggest an employer surcharge per employee based on a sliding scale. For example, all existing schedule 2 employers plus all employers who are not covered will pay the minimum per employee and the companies with the worst accident frequency rate pay the highest surcharge per employee until the liability is fully funded.

At first glance, this may appear to be an off-the-wall suggestion, but we respectfully request that this committee have a group of experts, including labour representatives, carefully consider the feasibility of our proposal.

I thank you for the opportunity to present our views to the committee and I look forward to your questions.

Mr Steven W. Mahoney (Mississauga West): Interesting suggestion. There are a lot of people in the

business community who would agree with that suggestion, perhaps for different reasons. But there are a number of groups that have been to see me to see if we would support them transferring into schedule 2. What do you do, though, in that kind of scenario with truly small business, bearing in mind that the purpose of WCB was to have collective protection of paying into an overall pot so that someone is not put out of business due to that? You know that the costs that can be associated with rehabilitating an injured worker can be just horrendous. So what so you do, recognizing that a huge part of our business community is not exactly in the same league as Ontario Hydro?

Mr Sarginson: I think to try and answer that question, as I said in the opening, we also represent Dryden, Kenora and Whitby Hydro, and it's very, very interesting to note that they could by definition be schedule 2 employers. But if we look at Whitby Hydro as an example, because they have a bad safety record they're determined to go schedule 1. If we look at Kenora and Dryden, they're determined that they would stay with schedule 2.

In answer to the first part of your question, with the smaller companies, I recognize that that perhaps may not be feasible, but then again it was a suggestion that, say, companies with fewer than 200 employees could in fact still be covered by the community obligation, if you will. But we believe that the other companies should pay the full cost, in fact.

Mr Mahoney: So you would define it by the size. Small business, technically, is defined in most provincial ministries as being fewer than 100 employees. That's not exactly small, but that's the threshold that is used, and you're suggesting anybody under 200 come into the collective liability program and anyone over that be given the option of opting out?

Mr Sarginson: I would certainly suggest that that would be the figure we should look at to start with, yes.

Mr Mahoney: The involvement of the medical profession: You've indicated here that Ontario Hydro deals fairly successfully, not to put words in your mouth, but just paraphrasing this that returning workers, whether it's due to their size or their status in schedule 2—can you tell us how the medical community works with injured workers in Ontario Hydro?

Mr Sarginson: It works excellently. I think perhaps the best example is if we go to Kincardine-Port Elgin, the Bruce site, as we refer to it. In that community, because the rehabilitation program was working so well, the joint team, both labour and management representatives of the team, met with all of the doctors in the community, made them aware of what was available at Ontario Hydro and that they would lay out a physical analysis of any duties that they wanted them to return to, and it's worked excellently.

1430

Mr David Johnson (Don Mills): Thank you very much for that deputation. We certainly appreciate it. I was interested to see the success at Ontario Hydro with over 85% of the injured workers returning to the

workforce, and that's quite a credit. I'm just wondering if this was done during the period of time when Hydro was downsizing as well. Am I right?

Mr Sarginson: No, sir. No.

Mr David Johnson: This was before that time?

Mr Sarginson: Since we got Mr Strong on board we've lost more people, including injured workers. No, this was between the time frame of 1990 up to the middle of 1992, before the massive restructuring.

Mr David Johnson: Then my question is to you, during a time of restructuring, and many businesses in Ontario, large and small I guess, are going through this rather painful process, how can this be handled during such a period of time? Hydro, apparently, according to Mr Strong, has downsized by some 10,000 employees. So when you talk about vacancies, there are probably no vacancies at Ontario Hydro. As a matter of fact, they're looking to downsize even further, as I understand it. So in a situation like that, for example, would the union give priority to injured workers with seniority to be able to bump those with less seniority who are not injured?

Mr Sarginson: The way that it works is, I would say the largest percentage of the downsizing at Ontario Hydro was taken care of by two plans: the early retirement incentive and the voluntary separation package. So while there are certainly no vacancies, if you will, advertised to the outside community, there are still vacancies within the corporation because certain pockets of people took the retirement package, say, out of the Niagara region, which created openings there.

But as far as the injured worker getting priority, as long as there are no surplus employees, then for any vacancy that comes up, the injured worker gets number one priority. If in fact we have surplus employees in that particular classification, then the surplus employee gets number one priority. So the injured worker has it under normal circumstances.

Mr David Johnson: It's a little trickier during periods of downsizing—

Mr Sarginson: Of course it is.

Mr David Johnson: —at any rate, to accommodate. That's the problem.

Going back to the surcharge that you've recommended to address the unfunded liability, I'm not sure I understand that entirely, but basically you're suggesting a surcharge on those employers with a poorer record, are you?

Mr Sarginson: No. I'm suggesting that—because I truly believe that everyone should have been paying into that fund for a long period of time—the banks, the insurance companies and so on—so I'm saying that with schedule 2 employers, I believe that they have paid the full cost. They've paid the full cost of compensation. They have not created anything to do with the unfunded liability. So those employers, along with everyone that is not presently covered, should in fact be forced to be covered. They would pay the minimum surcharge—they would still have to pay a part of it—and the ones with the bad track record would pay a bigger surcharge.

Mr Randy R. Hope (Chatham-Kent): Thank you

very much for your presentation. I wanted to focus on a number of things dealing with the re-employment; also where you made reference to putting everybody as schedule 2 employers. With the changes to Bill 165 that have been put in place to deal with re-employment and the enforcement of re-employment and make sure that there is a re-employment program in place, don't you think that would help alleviate that instead of changing everybody to a schedule 2, in your opinion?

Mr Sarginson: No, I don't, and simply because, as I said, I think the figures speak for themselves. We'd been told that with Bill 162 that in fact that would happen, and now we see that 78% of those who have been off for over a year are not being re-employed. So I think it needs a bigger stick, if you will. To me, the bigger stick would be that now you make them all schedule 2 so they have to pay dollar for dollar.

Mr Hope: So you're saying, instead of getting away from checking everybody's re-employment program, let's just make them all schedule 2 and then there will be the obligation to re-employ, is my understanding.

With the return-to-work process that happens with Ontario Hydro and your other ones, the information obtained from a doctor: There have been questions and concerns about the type of information that is going to be needed in order to make modified work available for somebody. In your opinion, what type of information is being required from the physician dealing with the restrictions of an individual in order to make modified work available for the employee?

Mr Sarginson: What they simply have is for each particular classification there's a physical demand analysis that is sent along to the employee's physician. It says: "These are the duties that we would like them to perform; this is the analysis that we've done on that particular job. Can this individual meet those demands?"

Mr Hope: With the re-employment aspect, has it ever been, in the time that you've been involved with WCB and representing the workers in your workforce—I guess it's always been a question of mine, if they can't modify work then why would an employer want to be involved in the re-employment of an individual who no longer will work them for eventually? I'm having a hard time understanding some company saying, "We want to be involved in the re-employment but they're never going to work for us again because there's no re-employment for them to go to." Where is the real obligation on behalf of those employers?

Mr Sarginson: Again, just to draw the comparison, Whitby Hydro, as an example, employs 21 employees. Because they've had a record in the past, they decided to go schedule 1 because they know they can get away with \$60,000-a-year premiums paid to the board as a schedule 1 employer. Now they have an employee who is a 15-year employee with the corporation who was injured on the job who cannot do the full duties of a lineman and they simply want to push him off to the board, if you will. What we're saying is, if you'd been schedule 2, you wouldn't have done that because you'd have had to pay for every single dollar of rehabilitation/retraining that the board pays out for that individual.

The Vice-Chair: On behalf of this committee, I'd like to thank the Power Workers' Union for giving us their presentation this afternoon.

CANADIAN FEDERATION OF
INDEPENDENT BUSINESS

The Vice-Chair: I'd like to call forward our next presenters, from the Canadian Federation of Independent Business. Good afternoon; welcome to the committee.

Ms Catherine Swift: Thank you, Mr Chairman. My name is Catherine Swift. I'm the executive vice-president of the Canadian Federation of Independent Business. I'd like to introduce my colleague, Judith Andrew, who is our director of provincial policy with special responsibility for Ontario.

Actually, we have provided a brief—a brief brief. As you may know, the CFIB not only has been very involved in workers' comp policy in Ontario for quite a long period of time, we're also members of some of the various business coalitions, notably the Employers' Council on Workers' Compensation and various other committees connected with the PLMAC, for example, that have been involved in this process.

I'd just actually like to make a few brief comments and leave as much time as possible for questions. Twenty minutes, unfortunately, is a shamefully short period of time for such an important and complex piece of legislation but we think that probably the more questions, the better. Most of our statement is probably pretty much a reiteration of what some of the other business groups before you have said, so we won't belabour things that we believe have been adequately represented by others.

As you probably know, we represent small and medium-sized businesses. We have some similar difficulties as large businesses would have with workers' compensation policy but I think we also have some more unique ones. What we find troubling about Bill 165 generally is that our group and many other business and other groups, for that matter, entered into the process of workers' compensation reform with the belief that at least in part we were going to do something about the financial fiasco of the current workers' compensation system. We regret that this bill does nothing to address this, and indeed, in some aspects, may potentially even worsen the situation. That was certainly something that we felt was essential, both to give employers a little bit of confidence as well as ensure the future of injured workers.

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We do a lot of surveying of our members and some of our recent results are outlined on page 3, for starters, of our brief, for example. We did some recent surveying earlier this year and found WCB premiums listed as the most harmful tax or charge—and this was limited to provincial charges and taxes, by the way—to the our members' businesses. I should note that this was highly unusual. Workers' compensation is always an important issue, but we rarely see it up there as number one among our members and I think that just represents their growing concern with how out of control the system appears to be.

This concern has been increasing dramatically over

time, as the chart on page 4 indicates. And as we see on page 5, the second most significant impact of the 1994 premium increase, preventing hiring, should be naturally of concern to all of us no matter where we come from, since I think we all want some job creation in this economy, and as you know, recent stats have shown that small and medium-sized firms are the only firms that are, on a net basis, doing any hiring these days.

Just to conclude, and again to try to avoid just repeating what others have said, we're quite concerned that the financial aspects of the system have not been addressed within Bill 165. We're particularly concerned, particularly from a small business perspective, about such things as the template of best practices, which we believe will end up an even worse administrative nightmare for small firms than, I think, large firms. That's a key difference between large and small firms.

We feel that elements of a proper review of the system have to look at goals such as a reduction in benefit levels to get rid of some of the current absurdities in the system of people actually netting more money when they're on workers' compensation than if they're working, and such elements as well as a regular value-for-money audit of the system by the Provincial Auditor.

We can't express strongly enough that, for a system that's fully funded by employers in this province, and that of course they initially were pleased to buy into because there were definitely tradeoffs involved that supposedly benefited all parties, there is virtually zero confidence in the system on behalf of small and medium-sized firms right now. This can't serve to anyone's advantage in the long run since there's simply the potential that businesses are going to want radical, radical reform and, given the financial instability of the system as well, this reform may have to take place in the future at a much more precipitous pace than if we try to get a grip on problems now.

We also feel that there has been announcement of the intention of having a royal commission in this area, and to undertake the kind of reform in Bill 165 we feel really properly should be the job of this royal commission, if this royal commission is to really have any true mandate.

As a result, our recommendation concurs with that of many other business groups, that we really should go back to the drawing board. We really do need to scrap this bill and undertake some kind of true reform that's balanced on both sides.

Judith, I don't know if you have anything to add at that point. Nothing in particular? We'd welcome your questions at this time.

Mr Ted Arnott (Wellington): Thank you, Ms Swift and Ms Andrew, I appreciate your presentation. I've got one question. You've given us some aggregate results of your surveys of your membership. I received a letter last week from one of my constituents; the man's name is Howard Frohlich from the Guelph Utility Pole Co. He employs about 40 people and they treat the large hydro poles. I'm not sure if they're one of your members or not.

He tells me that since 1990 he's paid about \$242,000

to the Workers' Compensation Board over that four-year period and the claims for the company due to accidents were about \$21,600. He's written me and he's asked this very simple question: "Where is the incentive to operate a safe company when the cost of the Workers' Compensation Board exceeds the claims by 91%?" And those are accurate numbers. Not only that, his rate of assessment has gone up 30% as of the first of the year. Is that fairly indicative of what you're hearing from your membership, that sort of a story?

Ms Swift: It is quite indicative. Of course, there's a lot of variation among different kinds of businesses and what not. I guess another problem we have repeatedly—I was just talking to a Toronto Sun reporter before coming here today about problems within the administration of the board itself. So part of it is certainly policy-related and how the system operates from that perspective, but there are also massive administrative problems. Again, small firms don't have the resources. If you've got five or 10 employees, you cannot spend all your time on the phone with Workers' Compensation Board bureaucrats.

You're right about the seeming lack of linkage. For the longest time, businesses were told, "Improve your safety record; you will at least have a level of premiums that will be retained," and not be increasing by these drastic amounts like 30% when we see inflation running 1% to 2% and other costs of doing business not increasing anywhere near to the same extent. Obviously that linkage has been profoundly broken. Workers' comp has nothing to do, it seems, with safety in the workplace. Indeed, our concern again with Bill 165 is the whole potential gutting of experience rating, which again is presumably a very strong incentive to positive, safe workplace practices. So that's very indicative and I think it begs a lot of other questions on this issue.

Ms Judith Andrew: Just to add, if I'm not mistaken there was something in the order of 27,000 businesses that faced increases of that magnitude this past year. So that gentleman's complaint is not an isolated phenomenon. A 30% increase in one year is almost impossible for anyone to absorb in this economy. So it's no wonder our small business members are very irate and at wits' end, frankly, about what to do on this.

Mr David Johnson: I was interested to see your poll which indicated that workers' compensation costs were the number one concern now of your community. It reminds me of a couple of deputations that we heard in Sault Ste Marie last week. For example, it was pointed out that in the grain industry, and it's probably not one of your members, but they're comparing the assessment rate, which in that industry is 6.85% in Ontario versus 3.02% in British Columbia. They're indicating to us that the grain industry in Thunder Bay is in decline; a lot of the grain is going west rather than coming through Thunder Bay, and the impact that has on jobs and the local economy. We've heard other deputations. There was a general manager of Seamless Cylinder International who said something of the same thing. She indicated that she has to be competitive on a global basis; not just here in North America, but on a global basis.

I wonder if you could translate to us in any way the

jobs that are lost when workers' compensation premiums go up—and we have the highest I think in Canada right here in Ontario—and what the impact of that is in terms of jobs lost and the people whom you represent.

Ms Swift: It's pretty impossible to quantify, because of course so many other factors affect hiring. I think the important point is that all of these factors, including workers' compensation among the array of other charges, taxes, costs of doing business that people face—these days businesses are operating on a hair-trigger. Nobody is seeing enormous margins. Profitability I know in some people's minds is a dirty word, but of course profitability is a precondition to hiring, to surviving as an economy, and we see profitability still unfortunately very sluggish even though we are seeing some economic growth.

I think the important thing is, already in Ontario we have an incredibly high cost of doing business for all kinds of different reasons. Workers' compensation is one important component of that. It is also a very labour-sensitive component. Small businesses are more labour-intensive by nature than large firms are, for a range of different reasons. Anything that increases the cost of employing that extra person—that one chart we have in there shows that about 30% of our members said it prevented them hiring. They resisted hiring as a result. Others had a lesser proportion, but others actually were looking at layoff situations because of it.

There just isn't a pot of gold there to be tapped for workers' comp as well as any range of other charges. Right now competitive pressures are more intense than we've ever seen them, again, not just domestically but internationally. But even if you just want to limit yourself to Canada, we are by far the highest in terms of average premiums. We're also by far the largest unfunded liability, and employers know darn well that is simply the promise of future premium increases.

1450

Ms Sharon Murdock (Sudbury): Thank you very much for your presentation. I wanted to talk about the classification system because it's been mentioned indirectly in other cities that we've been in. Obviously I think we all know that the higher-risk businesses pay higher premiums than the lower-risk businesses and that the employers have been involved with the Workers' Compensation Board for four years in trying to set up a classification system that would reflect the levels of risk in order for their payments. To your point earlier, that while a number of employers got increases, and significant ones which were subsequently frozen, there were 50,000 that got decreases from their regular premium as well. That has to be mentioned also.

But some have suggested in these hearings that a flat rate be applied, where everyone would pay the same, where it would—obviously then, I presume, this is the way that would work: The ones that are paying lower would have to be evened out into a median kind of percentage per \$100 of payroll. I'd like to hear your comments on that.

Ms Andrew: The notion of a flat rate maybe has some kind of appeal, but frankly it would be a disaster for the system overall because employers would not

longer have any cost-based reason for trying to reduce accidents and so on. This is why we are so concerned about having a proper classification system and sensible experience ratings, so that firms are placed correctly within a class, within their peers, and their own experience is measured against those others in the same industry and they have built right in an incentive to reduce accidents and reduce time off work. If you put everyone to a flat rate, the high-risk industries would frankly not have that financial incentive any more.

I would also point out that there is a considerable majority of firms in this province who would see their rates go up. I think it's something like 70% are paying less than the average rate. So that would cause a tremendous outcry in the province.

I think what we have to do is look at getting the costs under control, and some of the things that Catherine suggested earlier in terms of the benefit levels and the entitlements—we're not asking for miserly entitlements, but frankly, some of the entitlements go far beyond what is reasonable and what is sensible in terms of encouraging return to work. If a person is able to earn more money while they're off than if they return to work, that's a pretty poor incentive to go back and frankly is a disservice to that individual who's probably trying to recover from an injury and trying to make an effort and has to weigh the consequence of actually being financially worse off. That doesn't make any sense at all. From an insurance point of view it is not sustainable, and these are the kinds of reforms that are necessary to reduce the cost of the system overall.

I suppose there are some problems with the classification system. The new system has probably some quirks to be ironed out, but once those are ironed out, the issue is not really how you divide up who pays; the issue is how to get the overall costs of the system down so that we are competitive in this province vis-à-vis other provinces and so that injured workers are looked after fairly and so that there is a proper incentive for health and safety and that no one has to suffer unnecessarily because of the way we've designed the system.

Ms Swift: If I can just add something briefly, we've also heard some of the people who are promoting that notion of a more uniform rate. Part of the reason for doing so is to remove employers' incentive to challenge assessments, to challenge situations and so on, and that kind of reducing things to the lowest common denominator or whatever. It seems to fly in the face of the whole purpose behind having this kind of system in the first place, which is that you get rewarded for safe practices, and getting rid of that principle would be a fiasco, in our view.

Mr Mahoney: Thanks for your presentation. You didn't introduce the third member of your delegation.

Ms Swift: Well, she's making a lot of noise.

Ms Andrew: She's not pleased with Bill 165 either.

Mr Mahoney: I'm sure she's not, and in fact she'll have to suffer the consequences long after we're gone.

The issue of financial accountability: We've heard a lot about it from business groups. The group that you're a

part of, the ECWC, came before us and expressed a lot of concern.

When you interpret the bill and you go to section 15, subsections (3.1) and (3.2), which deal with the board's responsibility to "evaluate," for example, "the consequences of any proposed change in benefits, services, programs and policies to ensure that the purposes of this act are achieved," and then you go back to the purpose section of the act, there's nothing in there other than the delivery of fair compensation, health care benefits, rehab and survivor programs. There's nothing at all that lays out in the purpose clause a requirement to take into account the costs.

Now, we've heard that from other people. Can you just maybe give us your position on that?

Ms Andrew: There was, in our view, a very balanced purpose clause that was drafted under the auspices of the PLMAC, and it did deal with the issue of business competitiveness in terms of any new programs and policies and so on being evaluated not only in light of generally accepted advances in health sciences and other things, but also in light of what it would do to the system from a business competitiveness point of view. That whole notion was taken out and it doesn't appear anywhere else in this bill. The purpose clause basically mandates the WCB to offer more benefits in all sorts of other areas without considering how they would be paid for.

Mr Mahoney: And we know we're talking stress—

Ms Andrew: That's right.

Mr Mahoney: —ultimately, although it doesn't use that word.

I have a copy of a letter dated April 21 from the Office of the Premier, and you made reference to the PLMAC agreement. This is a letter to Jim Yarrow, chairman of the ECWC, and it's only four months old.

"Dear Mr Yarrow"—and it's crossed off—"Dear Jim"—so I guess they know each other reasonably well. I'll quote a paragraph from this letter. It says—and this is the Premier writing this letter—"A 'purpose clause' will be added to the Workers' Compensation Act which will ensure that the WCB provides its services in a context of financial responsibility. This clause will also address the principles of fair compensation and benefits for workers, as well as enhanced rehabilitation and return to work." The Premier said that.

It does do the second part, without question, but he clearly said that they would add a purpose clause. This was talked about a lot at the PLMAC process between Jim Yarrow and the Premier on a first-name basis, and yet he's not done that.

Did the Premier—was he wrong? Did he lie? What do you think?

Ms Andrew: He apparently reneged on what he said in that letter. Certainly, when the business leaders and the business steering committee and all of the committees supporting that effort came into this process, we were fully expecting that there would be some attention to the financial side. After all, there is presently an \$11-billion unfunded liability. Everyone knows that eventually that

has to be paid. The notion of doing it without bankrupting the businesses in the province and without shortchanging the workers in the province seemed to be appealing to the Premier, I think, and to everyone.

For some reason, we've ended up with a bill that's going to, on paper, save a modest amount, something like \$700 million this year—but I, frankly, doubt that—but we'll see the unfunded liability rise over the period of time to 2014 up to \$15 billion. So they're going to take it from \$10.9 billion up to \$15 billion. In our view, that is not getting a grip on the financial problem.

The purpose clause is really the touchstone, the notion that there was going to be some attention paid to both sides of the equation so that the security of injured workers' benefits was safeguarded, and it's not there.

The Vice-Chair: On behalf of this committee, I'd like to thank the Canadian Federation of Independent Business for bringing us their presentation this afternoon.

1500

SIMCOE CENTRE INJURED WORKERS ASSOCIATION

The Vice-Chair: I'd like to call forward our next presenters, from the Simcoe Centre Injured Workers Association. Good afternoon and welcome to the committee.

Mr Les Barnett: Good afternoon. My name is Les Barnett. I am the president of the Simcoe Centre Injured Workers Association. I represent pretty close to 6,000 cases we've completed in the last 10 years, plus we have 1,100 cases on our file right now.

I think I can speak through the knowledge that I've gained in the last 15 years of doing injured workers, and you're giving us something in this bill, but you're taking more than you're giving away. The bill is a step in the right direction, but it's two steps back, and we feel that amendments have to be made to this bill for the injured workers to support it.

The injured workers—there are 35 groups in the province of Ontario. The standing committee as it stands right now is visiting four places only. Injured workers cannot afford to travel these great distances to come and make presentations in front of you. We are a major shareholder in the board and the policies and the bills that do come down. We are very strong in that, yes, the \$200 for the older workers—that covers me. I was a fireman in 1970. I got injured. I had to find another job, less pay. Right now, I'd be making almost \$100,000 as a fire captain if I was working. I ended up finding another job, and I had another accident and got injured again.

I look at it as not just me, what about my family? What do they suffer when an injured worker suffers an injury? He can't do the things that he used to do with his family. He can't go where he used to go. There are a lot of things that when you represent an injured worker you represent a whole family, and a family eventually becomes a voting family, and every member sitting here will have to be accountable to a voting member, because when you're injured, you're not looking to get rich, but you'd like to keep a level of cost so that you could live comfortably. You didn't ask to get injured, and now you've suffered the repercussions, not only from the

compensation board but from the parliamentarians who make the laws and sit for us.

We elected you here to do what we thought was right. I hear a lot of talk about money. No money can replace what an injured worker loses when he becomes totally disabled. He's on a fixed income by the compensation board. If he's lucky, he may get Canada pension. If his son needs a prescription for \$90 or \$110, he can't afford it. He's on a limited income because the compensation board says, "We only cover the injured worker."

There's got to be a little more compassion by all members of Parliament saying, "Hey, there's got to be help for the injured worker." The injured worker does try to get back to work. Nobody wants to sit at home. I've yet to meet an injured worker that says, "To hell with it; I'll stay at home." They want to go back to work, and there's no real guarantee that they can go back to work. There's no real job. There's deeming in Bill 162 that went out there, and "There's a little job." I could be the Premier of Ontario. I don't want the job, but by the same token, I could be deemed to have it, and I could be making \$100,000, which means I don't get any compensation.

I feel it's time we started looking really at what the problems are. Bill 165 has some good points. But the good points are overshadowed by the bad points of it, and the bad points are, there are no permanent re-employment rights. This \$200, if you're on the 147(4) supplement you would get this. It's not carte blanche on a pension that's an extra \$200. It's got little ties to it, and we think that these little ties to it should be thrown away.

We feel, and I say "we" because I speak for a lot of injured workers, and over 7,000 cases I've been involved in, that's 14,000 or 15,000 people, husband and wife, not counting the adult children that are involved or the small children who are involved who don't have a mother or don't have a father that can do the things which are normal things, everyday duties—pick up a baby to change it, sit and rock a baby. If you can't lift, how can you do any of these things? These are the things that we, the injured workers, would like to see this standing committee not only look at the small picture, but look at the big picture. There's a lot more there.

I hope I'm not boring anybody, but by the same token, I'm saying, "Hey, we need some help." As an injured worker, I can talk because I'm an 88% disabled worker. I worked for the government of this province. They told me I would not be hired back unless I was 100%, yet I saw a bill just passed the other day saying that the government must rehire. I see the opposite. There's nothing here.

I also represent a lot of tannery workers who died in Barrie; 86 people died because of chemical poisoning. I had a cabinet minister come to—she wasn't a cabinet minister, she was in the opposition of that day, but she was the compensation critic, and she came and she said, "The government of the day, when this thing comes to a head, will not support you." It's come to fruition.

Mr Daniel Waters (Muskoka-Georgian Bay): Hi, Les. I haven't seen you for a while. You mentioned the \$200. Well, that is for life, by the way.

Mr Barnett: No. If you look at the way it's worded, if you're on 147(4), if you're on a supplement, you get that. I've never had a supplement. I've gone out and got a job, worked my fanny off to raise my kids. If I had to work two jobs, I worked two, even after I had an injury as a fireman, but you've got to have that supplement or you don't get it. Then it's attached to the supplement. It's not given carte blanche. As long as you get the supplement, you get the \$200. And I don't think that's right.

Mr Waters: We've heard a lot of discussion about the \$200. I guess I look at Bill 165 as the first step. I think the only way we're going to fix it is with the royal commission, and actually act upon what the royal commission comes down with.

Mr Barnett: I think this bill should be set aside till the royal commission does the work it should be doing, and that is addressing all the problems of injured workers, Dan. They're the ones that have the problems, and I would feel sorry for anybody here who is injured, because unless you're injured, you don't really know what it's like. You don't go through the pain, you don't go through the agony, you don't go through the mental stress. A lot of things happen in your life. A lot of things have changed my life because of my injury.

Mr Waters: We have an employer in our area who pulled out and moved to Mexico under free trade. I've heard from employers here almost to the point where it sounds at times, especially from some of my colleagues across the way, that the injured workers are the guilty people. I was wondering if you could quickly recap what that employer was saying to his people who were on compensation, the fear that he was trying to instil into the workforce.

Mr Barnett: I did the hearing this morning on one of those people from that company, and here was a company that employed 600 women. We have 103 of them off on compensation. Of that 103, the company brought them back to work, said they had modified duties for them; they couldn't do the modified duties; they fired them. Where do we go with them—back to compensation? Do we bring them back on compensation?

The employer says: "No, you're fired because you can't do the job. Go on UIC. Go on social services." That's all they're doing, passing the buck. And this is the employer who has got a very big union, and the union won't even answer up for the employees. I'm not knocking the union. I'm just saying that certain things are done and you can't change them.

As Mr Waters so eloquently brought out, this was brought out in the newspaper by a cub reporter who tried to talk to the union and the union wouldn't talk to him, the company wouldn't talk to him, and 103 employees are now out of work, permanently injured. Where are they going to get jobs?

1510

Mr Waters: The number of people who apply for WCB—I keep hearing more and more. Because you run the centre, maybe you can give me an idea in central Ontario as to how many people who should be on WCB, in your estimation, or who come to you who are living

off of welfare or other forms of social assistance.

Mr Barnett: I would say about 75% of them, because an injured workers' group never gets the easy cases. They get the ones that the employer says, "Well, I'm not sure he did it at work." Or the doctor says, "Maybe it was caused by a work-related injury." These are the problems the injured workers get. They never get the ones that are: "Here. Paid. Thank You. Over."

We get the ones that are hard, that you got to dig on, you got to find out—like the employer hasn't put in a form 7. The employer, because his assessment cost is high, he disputes the injury. I've had just about everything you can come up with.

As a matter of fact, I just recently had an employer fined because he sent in two form 7s on one girl. He said she had a car accident; that was her injury. But in fact she was lifting a patient at a nursing home with one other woman. The other, heavyset, woman lost her balance and took both girls over. One injured her back. The employer sent the board the form 7 saying she was in a car accident. When we sent her out to get the form 7, it came back that she was lifting a patient. We took them both down to the board. The board fined the employer \$5,000. These are the problems we have.

Mr Mahoney: Les, I recall you spent some time with me in Barrie when we did our outreach, and I appreciated your input at that time. The question I'd like to ask, you made a reference to the union—you weren't knocking them, but not being available to help or not able to help or whatever. Unlike Mr Waters who just made the remark that somehow we in the opposition don't care about injured workers, I think that's nonsense. I don't accuse anybody in the Legislature of feeling that way.

But we do have a serious problem. You see service delivery I'm sure on a daily basis and get frustrated on behalf of the many clients who you represent. It's not working. The current system is not working for the injured workers whom you're representing. The companies are complaining about the cost burden and so it's clearly not working for them. In the three-month outreach that I undertook I saw so many areas where we could improve just with common sense: the involvement of the medical community in making decisions on the level of injury, in return to work, in modified work, and doing all of that kind of stuff.

But the thing that's sort of underlying—and I'd maybe like your opinion as an advocate on behalf of injured workers—and I know you've represented thousands over the years: Why was it necessary to even start a Union of Injured Workers?

Mr Barnett: Well, Mr Mahoney, I'll ask you: Why do we have a food bank? Things aren't being done that should be done. I was a very strong Liberal when David Peterson got elected. As a matter of fact, I was president of the Liberal party in my riding. I stood up for him 100%. When he passed Bill 162, I joined the NDP. Now Mr Rae is doing the things he's doing; I'm tearing up my NDP card because I don't know who to believe anymore. Everybody tells me something.

Bill 162 was the worst bill that David Peterson ever

put forward. It was a bill that the Conservatives had put forward 20 years prior and was denied. Mr Peterson put it through. There are so many things you can change and help the injured workers. Here we sit as injured workers—and believe me, I am an injured worker. I look like a strong, healthy guy but, by God, I couldn't bend down to pick up a pen off the floor. That's bad.

When you're my size and my height everybody figures, "He's a strong, healthy man." I've had three major back operations. I've got 18 inches of metal down both sides of my spine with three cross-pieces. I suffer. What do I suffer? I can't even afford to buy my son a pair of Reeboks. If I was working I most likely could, but I can't because compensation only pays for the injured worker. We got to look at the bigger picture here. Bill 165 is a start. The \$200, if it's given carte blanche it would be a fantastic gift to injured workers. They do need it. But if they tie strings to it, then forget it, because you're taking our cost-of-living indexing away and that's like saying, "Nobody sitting in this room gets a raise."

I'm here because I believe in injured workers. I don't get paid to come down here. I come down here because I want to express the views of myself and the little over 1,000 active cases that we're working on right now. I believe that they're a strong voice. Mr Waters has been to one of our meetings and he'll tell you, we have 300 or 400 people out to a meeting and we're very, very strong in an association of injured workers who are trying to help injured workers. The changes—

Mr Mahoney: Let me interrupt you for a minute.

The Vice-Chair: Mr Johnson.

Mr Mahoney: Oh, that's it?

Mr David Johnson: Thank you, Mr Barnett, for your deputation and for your responses to the questions. Certainly, you've had a great deal of experience and I think when somebody with that kind of experience comes before us we really need to listen. The kind of message that you've brought, I think, is fairly typical of the sort of message I've heard from other injured workers as well. It's interesting that fairly unanimously, I'd say, the injured workers do not support the bill in its present form without amendments.

Mr Barnett: Not in the present form. There's got to be amendments to it to offset what you want to take away from the injured worker.

Mr David Johnson: Of course, you've heard from the Canadian Federation of Independent Business that was here just before, and I think they're very representative of the business community employers and they're opposed to it, and even some of the unions seem to be opposed, although I would think the majority of the unions are in favour, but there are some that are opposed. So it's interesting to hear people from different walks of life and there's a great deal of difficulty with Bill 165 that's before us, and your suggestion that it go back and either be amended or—

Mr Barnett: I think it should go back to committee and be amended and be brought back out in an area that you're not going to cut the arm off or the hand off that feeds you; you're going to cut the whole arm off, and the

way the bill is now you're cutting the whole arm off. Take a finger, please; leave me the rest of the arm. I need it to work with.

Mr David Johnson: I understand where you're coming from and I think you do an excellent job on behalf of the people whom you represent. This whole area is a mess and it has been pointed out to us day after day in the committees. When you look at the unfunded liability, which I'm told is increasing by \$1 million a day, which is somewhere between \$11 and \$12 billion—now, some people say, "Don't worry about the unfunded liability," and I understand the people who say that because they're saying, "Worry more about the people; worry more about the injured employees." But when you look in the long run, the concern I have is that there has to be support for the injured workers not only today, not only next week, but years from now, decades from now. If there isn't fiscal responsibility put into the system and if the unfunded liability continues to grow, and of course this year for the first time there's a negative cash flow in the system, then don't we have concern with regard to the availability of resources to help people 10 years from now, 20 years from now, who need that help?

Mr Barnett: Well, let's put more emphasis on making the job more safe so people are not going to get injured, so they are not going to incur these costs. People and employers used to be loyal to each other. There's no loyalty any more. I could put 30 years in a company and, "Bye," I'm gone tomorrow with nothing, and I've seen this happen with injured workers. There are many ways of fixing it. I had somebody come up to me and say: "Well, what happens if every injured worker paid \$1, everybody in the province paid \$1? How soon would that liability go, that unfunded liability?"

It can go many ways. But for 20-some-odd years they never had a cost increase, the employers. When the Conservatives were in power many years ago they didn't increase to keep up with the cost of what was going on, and all of a sudden now we're at the crunch and we should have stopped long before we got to the crunch. We're at the crunch now. What are we going to do? Well, you can't take it out on an injured worker because nobody asked to get injured. You can't take it out on the employer because there are limitations to what the employer can pay. But by the same token, cost versus body; to me, body is more important, and I think the body should be taken care of. I'm sorry; I'm going longer than I should. I realize that, but I just had to express my opinion.

The Vice-Chair: That's fine. On behalf of this committee I'd like to thank the Simcoe Centre Injured Workers Association for bringing us their presentation this afternoon.

1520

CANADIAN AUTO WORKERS, LOCAL 303

The Vice-Chair: I'd like to call forward our next presenters, from the Canadian Auto Workers, Local 303. Good afternoon and welcome to the committee.

Mr Colin Argyle: Good afternoon. My name is Colin Argyle and my colleague is John Sommerville from the

Canadian Auto Workers, Local 303. I'm here on behalf of the membership of Canadian Auto Workers, Local 303 to present my views and recommendations on this very important legislation.

I want to first thank this committee and the Ontario government for this opportunity to bring forward the opinions of the stakeholders who deal with the Ontario Workers' Compensation Board on a daily basis. It is only through open public hearings such as this that those involved can present to the government their ideas and recommendations for progressive change.

CAW Local 303 is an amalgamated union with an active membership of 3,500 members prior to the closing of the largest unit, the General Motors van assembly plant. It consists of three units: General Motors Scarborough, which ceased operations in May 1993; Manchester Plastics, which manufactures plastic components for the auto industry, and DEL Equipment, which manufactures large and medium-sized truck bodies. Each of these units is related to the auto industry in some respect.

As we know, the current workers' compensation system that we have in Ontario and in most other jurisdictions in Canada came about as a result of the in-depth study by Sir William Meredith around 1913. There were five principles on which the Ontario act was built: (1) security of payment was guaranteed, (2) it was to be a no-fault system, (3) employer-funded collective liability, (4) independently administered by a government agency, the WCB, and (5) injured workers could not sue their employer.

These five principles have guided legislatures in the past when attempting to improve the WCB system in this province. It is my view that past legislation, Bill 162, and this current proposal are beginning to deviate from these basic and very important principles.

Workers in this province gave up a very important right in order to receive income maintenance while recuperating from a work-related injury or disease. My experience in the field of WCB advocacy began approximately six years ago and was during the fiasco on the previous government's Bill 162, which, in my opinion and many others, I might add, was the most regressive piece of legislation dealing with workers' compensation in the history of this province. Although it gave injured workers the right to vocational rehabilitation and a limited obligation on employers to re-employ, it also created the practice of deeming. This unfortunately was not dealt with under this current proposal. If my memory serves me well, I can recall the NDP stating that it would be a priority of their government, once in power, to eliminate this unfair practice.

There are currently some 40,000 injured workers in this province relying solely on their meagre WCB pensions, social assistance or family members for their livelihood. Most of these permanently disabled people are living well below the poverty line. The present proposed changes attempt to address this issue by increasing the pension by \$200 per month, but it has tied entitlement to this increase to the subsection 147(4) supplement. It is my opinion that this will result in more activity in

challenging an injured worker's entitlement to this supplement.

The proposed section 54 amendment is a sound approach which will give the board the authority to determine if the employer has breached their obligation to re-employ those workers who are injured while in their employ. Unfortunately, this bill does not contain any proposals that would guarantee true vocational rehabilitation to those injured workers who cannot return to their pre-injury job and have no or limited transferable skills and very limited formal education. Immigrant women are especially affected by the narrow focus of the board's vocational rehabilitation staff.

A bipartite board of directors structure will ensure that all stakeholders have input into the administration and policy-making of the WCB. However, it is my opinion that the proposed subsection 58(1) puts the responsibility on a board of directors that could lead to further restrict the board of directors from implementing policies on entitlement or work-related occupational diseases that are known to be caused by workplace exposures. I believe that the employer community would use this section to stall the implementation of progressive policies. It is inherent with any corporate or government structure to adhere to the responsible running of the agency in which they are a director. I believe this goes without saying.

Subsections 53(2.1) and (10) propose vocational rehabilitation for employers. It is not vocational rehabilitation that employers require, in my opinion; it is more a need for education on the positive aspects of returning injured workers back to the pre-injury job or using their imagination when attempting to make accommodations to the workplace for permanently disabled workers. This proposed inclusion opens the door for unscrupulous employers to interrupt an injured worker's vocational rehabilitation. It is the injured workers in Ontario that require fair vocational rehabilitation, not the employers.

I have witnessed personally the negative effects that result by the actions of these types of employers. There is a growing industry of employer consultants whose only mandate is the challenging of injured workers' claims for entitlement to benefits under the act.

Section 51, as it reads, must not be included in the amendments. This violates the claimant's right to confidentiality between doctor and patient. It places the treating physician in an uncompromising position and may result in an injured worker returning to work too early and further injuring themselves or others. This proposal will also pave the way for further abuses of the system by those employers who feel that challenging a worker's claim is a cost-cutting measure. We must move away from the adversarial position in dealing with the WCB and injured workers, and focus more on employing those disabled members of society.

Experience rating was thought to be a way in which the board could measure an employer's accident frequency and to award those that showed improved accident prevention and penalize those that did not. However, what has resulted by this assessment-rate policy is this ever-increasing onslaught by employers and consultants in fighting workers' entitlement in every aspect, from

initial entitlement to SIEF abuses.

To expand on experience rating will not prevent employers from continuing this practice of cost-cutting attempts. Employers' rates should be applied on a flat rate of the industry group which they are in. Experience rating is a reactive measure, not a preventive one. In order to apply prevention, the board must have the authority to inspect all workplaces and to levy penalties on those employers known to have unsafe work practices. Prevention is the key to a safe workplace.

Mr John Sommerville: I would like to supplement my colleague's presentation briefly. As a person who's represented workers in front of the Workers' Compensation Board for some 15 years now, I assure you I have seen many changes that the board has gone through, or supposed changes, and it occurs to me that when we got Bill 162 we got one of the strangest creatures in terms of administrative law ever invented by the human mind.

What we got was a thing called "deeming," which means that a worker whom I recently represented was deemed, because he had an educational background from Iran, as it turns out—he was an immigrant worker and now a Canadian citizen—and he was trained as an engineer, so the person evaluating this worker with a profound back injury decided that he could be deemed as being an engineer, which would have led to an increase in his wage rate. Unfortunately, his educational credentials, significant somehow for the Workers' Compensation Board, were insignificant for Canadian employers, so he had a tiny future economic loss because he was deemed as being able to be an engineer. This kind of abuse is not going to be addressed by Bill 165, unfortunately, unless profound amendments are made to that act.

I hope that one other particular pet peeve of mine, which happens in the area of hearing loss, is also addressed by an amendment. Under the old Workers' Compensation Act, the pre-Bill 162 act, a worker would be assessed for a hearing loss and it would generally be a small percentage, 2% to 7%, in that range, but it was 2% to 7% of his real wages. Under Bill 162 it became a non-economic loss award, which substantially reduced the benefits he received.

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If this body does its work well on behalf of injured workers, and I believe, perhaps too optimistically, that everybody here is committed to trying to improve the lot of injured workers, if you do something to correct these kinds of abuses, in particular this wild and crazy deeming process—because you must understand that in the environment in which an injured worker is functioning, the person conducting the vocational rehabilitation is going to pay attention to the future deeming concept and they're not going to allow them educational entitlements that are contrary to what is indicated by what will be deemed their future economic loss award. So, please, put yourself to the work that is in front of you and correct these injustices and we'll all be very well served.

Mr Mahoney: Thanks very much for that. It is somewhat curious that there is nothing to address the deeming issue. We heard many examples in the outreach tour that I did that were somewhat wild, to say the least:

the school janitor in Timmins who was deemed to do the job of an air traffic controller. The good news was, there were no jobs available in that particular situation; but just no common sense, and I understand that. I'm a Liberal talking about changing that and we recommend eliminating deeming and replacing it with a STEP program that I'd be happy to share with you.

You made the statement, though—and I'm sorry I was late at the beginning, but at the end here you say, "Experience rating is a reactive measure, not a preventive one." Follow with me the example of automobile insurance, where you get three-, four- or five-star ratings which will ultimately determine your premium. Those ratings are acquired as a result of the number of tickets you get or don't get, the number of accidents that occur or the number that don't occur. Therefore, the insurance company, when it comes to look at you or it comes to look at me, will look at our driving record, our experience rating, determine where we fall—into the three-, four- or five-star category—and if you can hit a five-star, you're going to get it a lot cheaper than a three-star. Does that not make sense and is that not in essence a preventive or an incentive type of rating system?

Mr Argyle: That would make some sense, I guess, if you took out of the analysis the adversarial aspect of it. We don't have employers, at least that I know of, that are working towards the positive aspects of preventing the accidents in the workplace whereby you could see the results of a true merit rating system. Right now, when you see the cottage industry growing in the consultant area and WCB fields—merit rating is not going to solve the problem. Until we get employers that recognize that when you bring injured workers back to work and you make the proper accommodation to the pre-injury job, you're going to start employing workers in this province again—and not only workers injured while in the course of their employment; people who are disabled in society.

Mr Mahoney: You make that suggestion, which is very good; move away from the adversarial position in dealing with the WCB. You're talking about the relationship between the worker and the employer but there's also the adversarial position in relationship to the politics of WCB, when you get a Premier putting in writing a commitment to a business group to include the financial responsibility section in the purpose clause, putting it in writing to them in a letter dated April 21, and then it doesn't show up anywhere in the bill. You have adversarial relationships between the politicians and between business, you get business angry with labour—it's a lot more than just the worker and the employer who are fighting over this stuff. How do we get everybody pulling on the same rope instead of trying to push on the rope and take the adversarial section out of the entire process?

Mr Sommerville: Just an additional point: One of the problems with automotive insurance is that sometimes the actuarial systems that are applied in the insurance business are somewhat skewed. For instance, new Canadians, as I'm sure you're aware, are forced to pay artificially high insurance rates in the province of Ontario, one of the things which we had hoped might be corrected.

In any event, it seems to me that it's unlikely that the natural and wholesome adversarial relationship that exists in unionized working environments is going to disappear very soon. But we have to remember that at least 60% of the workers of the province of Ontario are at present unorganized. All the employer has to do to defeat the injured worker, particularly in those environments, is delay the process. They don't even have to win the case. They just have to stretch the guy out until his mortgage falls off the edge of the earth.

Mr Mahoney: WCB does that, though.

Mr Arnott: Thank you, gentlemen, for your presentation. It's good to hear from Local 303. While I was in university I spent one summer working at the Scarborough van plant and fully enjoyed the job, that summer experience that I had.

We're told that the unfunded liability at the Workers' Compensation Board is about \$11.7 billion. We're told that it's increasing at a rate of \$1 million. As two individuals who are very concerned, I think, about the long-term financial viability of the board, what do you have to say about the unfunded liability?

Mr Sommerville: If I might, the unfunded liability, of course, is something we hear about all the time now. It is important that any governmental institution be properly funded, but when you have an all-encompassing insurance program it's essential that all employers participate. But in the province of Ontario at present, banks, insurance companies and the underground industry, forced underground by some would say unreasonable taxation policies of various levels of government, if we take the most conservative statistics on the underground economy, there's probably 5% of the construction work in the province of Ontario that's being done unreported by workers who are not, alas, covered by workers' compensation in companies that don't pay premiums. The banks and the insurance companies have their own insurance policies which they cover their workers with, and those workers are, alas, unorganized to make proper complaint, although some work is being done to correct that injustice as well.

It seems to me that you cannot have a universal insurance plan without universal coverage. So if you folks really want to get serious about covering the unfunded liability, first get everybody in the house and make everybody pay a fair share. That means that a good employer who has a good, safe work environment won't have to pay as much as a sloppy and irresponsible management.

Mr Mahoney: It's called experience rating.

Mr Sommerville: That's what it's called.

Mr David Johnson: Just with the experience rating, most employers who have talked to us say that the experience rating the way it is today is an incentive to put in place programs that reduce injuries, that prevent injuries; and I think that's number one on all of our minds. But yet, you're saying that the experience rating the way it is today you don't support and it should be a flat one. That goes at odds with certainly what the business community and the employers are saying: that

it's been a valuable tool for them in actually reducing injuries.

Mr Sommerville: I guess I understand the principle of profit, a little bit, anyway, not from much personal experience but theoretically. My sense is that if I was an employer I would probably want to harken back to that system as well, because they had a long holiday where they didn't have to pay their fair share, even those who were covered, and certainly in the 1980s there is good statistical evidence that they didn't pay their share. They didn't pay what the real cost was.

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Mr Hope: Thank you very much for your presentation today. Earlier today we heard from some employer groups, the independent business association I believe their name was, and they were making reference saying that the employers are saying that the benefits should be cut, that injured workers make more on WCB, they take home more than they would if they were working.

I guess in your experience—because you went into a number of cases—with injured workers, does this really happen that an injured worker takes home more than he would if he was working? I guess I was just wondering what your views are—because I'm listening to the Conservatives and the Liberals—on an 80% or 85% take-home versus 90% in benefits, what your position would be on that.

Mr Sommerville: My bank doesn't want 85% of its mortgage; it wants 100% of its mortgage. The grocery store doesn't want 85% of the grocery bill. The company which I bought the car from wants 100% of their bill. Why anybody would perceive that it was okay for an injured worker to function at 85% of what he was earning—you'd have to assume that 85% of what he was earning was enough for him to live on. Trust me; in this day and age, that is not the case. That may also be your experience.

Additionally, just a few points about the older workers' supplement, which is what in the parlance of the Workers' Compensation Board the supplement is. The adding of \$200 to that supplement, anybody who's dealt with an older worker who is receiving these benefits knows it's very welcome. It receives a sigh of relief. Unfortunately it's a sigh of relief that comes from somebody who knows that even though that's not adequate, it's better than nothing. I feel that in addition to increasing that supplement, it's necessary not to increase it as part of the supplement but increase it as part of a payment to a worker who is unable to work.

Because it's called an older workers' supplement, many relatively young workers who have suffered permanent impairments and are unable to work have great difficulty obtaining that supplement. So it's very important that we try somehow, if we're going to do something for injured workers who are unable to find work, we do so outside of the framework of that supplement, separately, just on the basis of the fact that they need money to live. Any reduction in benefits is trying to pay the unfunded liability on the backs of working people, which is absolutely absurd. It's blaming the victims. We've had enough of that in this world.

The Acting Chair (Mr Daniel Waters): Thank you, Mr Hope, and thank you, gentlemen.

Mr Hope: That wasn't three minutes.

The Acting Chair: Well, when I assumed the chair, I was told by the Chair—

Mr Hope: I just wanted to find out who was responsible for people when plant closures happened. How are the GM workers who are disabled and not—

The Acting Chair: Mr Hope, thank you. Thank you very much, gentlemen, for your presentation.

ONTARIO TRUCKING ASSOCIATION

The Acting Chair: Could I have the Ontario Trucking Association come forward.

Mr David Bradley: My name is David Bradley and I'm president of the Ontario Trucking Association. I'm joined by some colleagues today. Nick Sanders is director of personnel, safety, insurance and environmental compliance at MCL Motor Carriers in Oshawa, and probably a few other hats. They just seem to be adding to the title, but those kinds of things have happened in the last few years. Frank Paglia is director of accounting for TNT Canada in Mississauga. Michael Burke is also from the OTA staff.

It's getting a little late in the day and I know you've been hearing a lot over the last few weeks, so I've left a submission with you, but I'd really just like you to take a look at the two pieces of paper on the top for now. One is a chart that in my presentation will become quite self-evident in terms of what that tells us. The second is a press release from last week from the Premier of New Brunswick who has plotted a somewhat different course in terms of bringing his province's workers' compensation board under control.

I want to thank the committee for the opportunity of appearing here today to talk about Bill 165.

OTA is a founding member of the Employers' Council on Workers' Compensation, and through our ECWC membership, we were a member of the PLMAC business steering committee. I know this committee has heard from both the ECWC and the business members of the PLMAC on the first day of the hearings. I want to begin by expressing OTA's support for the views that were expressed by those two groups, and we want to repeat the deep concern that we have over the manner in which workers' compensation reform has unfolded in the province.

It's been our view that the Ontario workers' compensation is at a turning point—in fact, I might say it's at a precipice—and that its very survival is at stake. Those may sound like ominous words, but believe me, in the trucking industry we can see the warning signs. We've lost a lot of companies over the last few years, and it doesn't take a rocket scientist to look at the numbers and see where we're heading in Ontario with respect to workers' comp.

It was our hope that 1994 would see the beginning of a significant positive reform and change in the direction by which workers' compensation is delivered in this province. While OTA, like many within the business community, was optimistic when Premier Rae's labour-

management advisory committee was assigned to review the system, we are disappointed with the results that we see in Bill 165. While the government has suggested that the genesis of Bill 165 was found in this labour-management accord reached last March, the reality is, I think, and I hope you understand this by now, that no such agreement exists, if it ever did. The very foundation of the government's initiatives, this accord, appears to have collapsed.

We want to make it clear that OTA does not support Bill 165 in its present form and we join with our business colleagues in calling for a withdrawal of this bill and a return to the drawing board.

The effective functioning of the Workers' Compensation Board and issues relating directly to that agency are of primary importance to us, and we represent 800 member companies in the province of Ontario. We also have a committee that deals with workers' compensation issues, and it has two primary goals in its mandate. One is to strive to ensure that injured workers do receive effective treatment, rehabilitation and eventual reinstatement through workers' compensation programs, because we think that's the best way to keep our costs down. In addition, it is equally important to OTA that workers' compensation is sustainable from an economic point of view and does not place an unfair burden on Ontario employers who are ultimately responsible for paying for it. OTA is concerned that the ability of the workers' compensation system to manufacture a realization of these two objectives may be in jeopardy.

You've heard I can't count how many times that with an overall unfunded liability of \$11.7 billion, rising by \$21,000 by the time I'm finished my presentation, that at the prospect within the trucking industry of higher assessment rates in spite of a declining accident rate, we're becoming increasingly pessimistic that real reform designed to ensure the sustainability of the system will emerge. In a labour-intensive industry such as ours, facing increased international competition, workers' compensation is a critical factor in the survivability not only of our members but of their employees' jobs.

The trucking industry is an industry that's playing and will continue to play a key role in the provincial economic renewal and I think it's important to just get an understanding of the context in which we come here today. Trucking is the dominant mode of freight transportation in Ontario. We haul 70% of all land freight. The Ontario trucking industry generates an estimated \$3.3 billion in GDP. That's more value added than any other freight transportation mode and more than some of the key Ontario industries that you might first think of. It's also a major consumer of goods and services, and for every dollar of value added created by trucking, another 71 cents in GDP is created in other industries. Moreover, that's spread through all the regions of the province, not just any one particular location.

One quarter of Ontario's GDP is exported, with three quarters of that going to the US, and all of the major trading regions for Ontario are within a major truck drive of the province. Trucking hauls about 75% of our province's exports to the US and 83% of US imports into

Ontario. So given the reliance upon trucking services by shippers of high-value-added products, which is what this province wants to produce, a competitive and viable domestic trucking industry is and will be central to economic renewal and vitality.

We are a labour-intensive industry. It's estimated that the total commercial trucking activity in Ontario creates employment for approximately 200,000 workers or almost 5% of the provincial labour force. Of that total, about 90,000 workers are employed in the for-hire and private sectors of the industry. This compares quite favourably with some of the other groups you would have heard from, such as the motor vehicle manufacturers at about 46,000, 65,000 in auto parts, 65,000 in electrical and electronics. Again, there the spinoff from our industry is quite significant. Every job in the for-hire trucking industry creates another 0.7 jobs elsewhere in the economy.

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According to some figures recently released by Statscan, wages account for about 32.5% of total operating costs of Canadian motor carriers, and that's the largest single component of our costs, and in some cases, depending on the fleet, it can rise as high as 50%. So, the purpose of all that is to say that that being the case, payroll taxes, including such things as workers' compensation premiums, impact labour-intensive industries such as ours much more harshly than capital-intensive industries.

In 1993, the trucking industry rate group was the third-highest industry group contributor in terms of total assessment dollars paid to the WCB. Specifically, the approximately 5,000 registered trucking firms in the province contributed over \$93 million in assessment premiums to the board, and significant in that is that 148 trucking firms paid \$50 million of that assessment. So there's quite a high level of concentration there.

For 1994, the average assessment rate applied to business in Ontario overall was approximately \$3.01 per \$100 of payroll. However, for trucking in 1994, the assessment rate was over twice that average at \$6.58 per \$100 of payroll, and that was a 10.6% increase 1994 over 1993. The WCB has set an even higher target rate for the industry, likely closer to around \$7.30, which they would like to see reached within the next two years.

The assessment per worker has risen equally dramatically over the last several years. For 1994, at the maximum assessable earnings ceiling, every worker in trucking, and this is in the chart on the right-hand side of the page that I distributed to you, would cost about \$3,500 in assessment. That's up from \$2,100 in 1989, or a 64% increase over six years.

Throughout these years, the trucking industry has worked diligently to improve worker safety, inspired in large part by the new experimental experience rating, or NEER, program. Emphasis has been placed on both returning injured workers to the workplace and reducing workplace injuries, and the results, I think, speak for themselves.

Look at the chart again, the one on the left-hand side

of the page. What it tells you is that in the five-year period between 1988 and 1992, the trucking industry saw its lost-time injury rate decline from 11.8% to 9.2%, a 22% reduction, and the number of lost-time accident claims in that same rate group reduced by a full 35% during that same period, from about 7,500 to about 4,800. So anybody who says that the business community, at least in this sector, isn't doing the job on safety, read 'em and weep. The numbers don't lie. However, despite the overall results reflecting the same trend, benefit expenditures paid out by the WCB during those years increased by a full 50%.

It's OTA's view that employers have accepted their funding obligations in good faith and have continued to do their part. The rising cost of workers' compensation cannot continue to be simply passed on to employers through ever-increasing assessment rates. Corporate competitiveness is critical to maintaining jobs and our standard of living. This is one program that is in urgent need of reform, and real reform. The WCB cannot continue to rely solely on assessment rate increases to resolve its financial difficulties.

Last year, the Premier of the province requested that business and labour work together to produce recommendations that would both provide fair benefit levels to injured workers and meet the objective of being financially sound. Much has already been said through other groups you've seen about the character of the accord that was reached, along with the government's decision to cherry-pick from that so-called accord.

Representing the interests of the business community on the newly established PLMAC advisory committee were the CEOs of five major Ontario companies, but they were supported by a lot of other people in the business community who put a lot of effort into this approach. There was a reference group of over 200 companies and associations created. There was a 16-member steering committee and 14 working groups to address particular issues of common concern, and OTA was a participant in those.

The 65 members of those 14 working groups represented the entire spectrum of all small, medium and large business across the province and they developed a series of position papers and recommendations for the CEOs. We repeat the counsel provided by the PLMAC business steering committee and encourage the committee to assess the extensive analysis that was undertaken at that time.

Our written submission, which you I'm sure will read at your leisure, details our views on the core elements within Bill 165. However, I wish to use our remaining time to address one subject of vital importance to our industry, and that's experience rating, which is a program that is fully supported by OTA and our membership.

The Ontario workers' compensation system sets an individual employer's assessment rate through an integration of the risk of the industry in which the employer is engaged. In 1984, the WCB introduced NEER, and it was designed to balance the requirement for collective liability—in other words, the creation of a standard industry assessment rate—with the objective of incorporating individual employer liability. The rationale at the

time, and it remains to this day, was that if an employer is accountable for his workers' compensation costs, a motivation on the employer's part would be developed to maximize worker safety and keep costs at a minimum. This motivation translates into improved accident prevention programs and ultimately a lowering of the claims demands on the compensation system.

The effectiveness of NEER has been examined by the Workers' Compensation Board. They conducted a study in the last couple of years which was called New Experimental Experience Rating Program Evaluation, and the study revealed that the NEER program has been very successful in achieving its goals. This is a quote from the study:

"The results of the evaluation study indicated that NEER has been effective in generating a substantial incremental impact on increased health and safety initiatives by employers in the areas of prevention and protection. The study also found that NEER has also been effective in generating an organizational response to the program in terms of focusing more clearly the responsibility for health and safety issues and performance within the organization. Analysis of board data shows a relative decrease in frequency rates for NEER rate groups...."

The November 1993 report from the PLMAC business caucus provided resounding support for experience rating. They said that "experience rating has been an unqualified success and has achieved its primary goals of reducing the frequency and severity of workplace injury and enhancing the level of individual liability."

The foundation of experience rating is employer accountability, with assessment being linked to company accident performance. The principle's twofold: to ensure equity—those that cost more pay more—and to provide motivation—fewer accidents contribute to less cost to the company.

OTA is of the view that without experience rating, the principle of employer equity would be compromised, as individual companies with a good safety record and those with a poor record within a particular industry rate group would eventually pay the same premium. However, with the application of NEER, a company with a good record relative to the average would receive a refund, while those with a poor safety record relative to the average would pay a surcharge. This incentive ensures that employers take an active role in reducing workplace injuries and returning employees back to work earlier.

The trucking industry was among the first to enter into the experience rating program. We did that in 1986. The following year the industry and the WCB worked together to develop positive enhancements to NEER which greatly improved its performance and understanding within the industry. Since that time, the industry's worked diligently to reduce its levels of overall workplace accidents and accident frequency.

The Acting Chair: If I might interrupt for a second, you're down to about three minutes left. I just want you to know.

Mr Bradley: Okay. I'll make it; I'll get there.

OTA remains committed to NEER, its principles and

its method. It's in large part due to the fact of that commitment that we are concerned with any alteration at this point to experience rating. We're convinced that the experience rating program is to a significant extent responsible for the improved accident record of recent years. The motivation it provides for improved safety has served employers and workers and the WCB well. It's our strong opinion, supported by the findings of the NEER study and through our regular contact with our members, that NEER has been successful in achieving its stated goals.

Under the amendments proposed in Bill 165, refunds may be eliminated and surcharges increased through purely subjective investigation by the WCB. This undermines the integrity of experience rating and provides the board with unsurpassed interventionist powers. It's not needed, it's not warranted and it's not productive. This type of interference will further damage Ontario's competitiveness and will upset the most significant element responsible for the success of experience rating, and that's its predictability. The revisions to Bill 165 proposed by the Minister of Labour do not in the least resolve these issues.

In the interest of time, I will stop there, Chairman.

1600

Mr David Johnson: Thank you, Mr Bradley, for that deputation. I was very interested in your comments on NEER, because I've heard them before, and I think there's a great deal of merit in what you're saying.

You're referring to amendments, I think, that allow the board to introduce other factors in determining the experience: health and safety practices, some sort of analysis of employer programs, vocational rehabilitation practices, that sort of thing. From my point of view, it seems to introduce uncertainty so that the direct accountability may be lost. This actually could work counter to the positive aspects to the experience rating system that we've had over the past few years. I wonder what your comments on that would be.

Mr Bradley: Absolutely. There's nothing more certain for a business than the impact on the bottom line, and that's where NEER allows us to manage our businesses and allows us to manage our safety performance. To cloud that with as-yet-undetermined other factors is of great concern.

In the transportation industry, we have a whole pile of legislation trying to tell people how to run their businesses, and I'll tell you, it doesn't really work very well. What you have to do is give people the proper incentive. Let businesses manage their businesses and they'll do a much better job than the Ministry of Labour or the Workers' Compensation Board auditors could ever do.

Mr Hope: Two questions: Have you ever used investigators for WCB claims and have you ever appealed a case?

Mr Bradley: Have I? Personally, no.

Mr Hope: Well, you had specialists up there. I just thought maybe—

Mr Bradley: Well, that's a different question. I'll ask Mr Sanders to respond to that.

Mr Hope: Have you ever used investigators for WCB, and have you ever appealed a case?

Mr Nick Sanders: Yes.

Mr Hope: Yes to what? Both?

Mr Sanders: Yes, we've used investigators, and yes, we have appealed a case.

Mr Mahoney: We've had members of the government telling us that this bill is a result of the accord that was arrived at with the PLMAC process. We in fact had a person we consider to be an inside government adviser, in the person of Mr Gord Wilson, say last week in London that this bill "mirrors the accord." Those were the words he used, "mirrors the accord." And you've said here in your presentation that you hope finally people understand that there was no accord and that this indeed was not part of the agreement.

Do you have a comment on why they continue to perpetrate this fraud that there was some kind of an agreement that led to this bill?

Mr Bradley: Maybe it was a cracked mirror, but Mr Burke was on the working group, and I'll ask him to respond to that.

Mr Michael J. Burke: There seems to be some confusion as to whether or not there was an accord, or whether it was an accord or an understanding or a consensus or what have you. We do know that when the business representatives of the PLMAC committee presented their recommendations on March 10 to the business community, they said that it was based on an agreement that they had with their labour counterparts.

It did not appear, for a variety of reasons, that that agreement would survive much beyond the following weekend. However, when the Premier did get up and make his announcement with respect to reforms of the workers' compensation system, he said that he wanted to build on the consensus that was reached between labour and management which emanated out of this PLMAC process.

Mr Mahoney, I can only say that I tend to agree with your basic statement that there is some confusion as to whether or not there was an actual accord or an agreement or not.

The Acting Chair: Thank you very much, Mr Mahoney, and thank you, gentlemen, for coming in today and putting your views forward. You're in a unique industry, as we've found a number of other ones coming in who are in a unique niche in our overall industry perspective.

CARPENTERS AND ALLIED WORKERS, LOCAL 27,
AND THE TORONTO DISTRICT COUNCIL

The Acting Chair: I would ask that the Carpenters and Allied Workers, Local 27, come forward and introduce yourselves for the sake of Hansard and the members.

Ms Olga Crimi: Good afternoon. I'm Olga Crimi. I'm with the Carpenters and Allied Workers Union, Local 27, and I basically handle our members' cases and appeals and basically the case load. I'm the WCB coordinator for the carpenters, Local 27, and the dry-wallers, Local 675. I'm here today also representing our

members within the millwrights under the district council. The affiliates represent in excess of 12,000 members.

The majority of the union's membership is engaged in heavy construction as rough and finished carpenters performing form work, excavation, scaffolding, drywall installation, millwork, finished carpentry, trimwork and cabinetmaking. The locals represent employees across the entire construction sector and include employers under schedule 1 and schedule 2 of the act, including the municipalities and school boards.

I'll begin by saying that even with the reduction of accidents brought about by the revisions to the Occupational Health and Safety Act and the recent economic conditions which have been responsible for a general reduction in construction work, recent statistics from the Central Ontario Construction Unit have shown that from January 1993 to July 1994 new claims in lost-time and no-lost-time accidents averaged 800 new accidents per month. Clearly, workers are still being injured and we feel that many of these injuries could be prevented.

When injuries occur in the construction industry they are often very serious due to the nature of the working conditions on a construction site. Construction workers suffer from numerous repetitive-strain-type injuries, occupational diseases, such as white finger disease which is caused by continuous use of vibrating tools, hearing loss resulting from noise exposure, and lung diseases caused by asbestos and dust exposure, just to name a few. Clearly, working on a construction site can be dangerous.

The 1990 amendments to the Occupational Health and Safety Act expanded the rights and responsibilities of workers within the construction sector. Changing the working conditions on any job site requires cooperation between both workers and employers. Accident prevention in construction must be addressed. In order to do so, workers and employers must be up to date with technology. WCB staff must also stay abreast of changes in the construction trade if they are adequately to serve injured workers.

This brings me to the section of the act which addresses re-employment. When an injured worker suffers a work-related disability, they're not only faced with the initial trauma but also with the inability to turn to their pre-accident job. Not only does an injured worker and his or her family need to cope with the injury and the ongoing physical and financial burden that accompanies it, but also with the threat of not having a job to return to. So far, the re-employment provisions under section 54 of the Workers' Compensation Act and the vocational rehabilitation services under section 53 have for the most part failed the construction industry miserably on these counts.

The amendment dealing with section 54, section 10 of Bill 165, also fails to address the uniqueness of the construction industry. While Bill 162 saw the introduction of section 54 dealing with the injured worker's right to reinstatement, it took another two years to implement guidelines for the construction workers.

First of all, the construction industry is characterized by short-term employment where construction workers seldom work continuously for one employer beyond one

year, and second, most contractors and subcontractors employ small crews with fewer than 20 employees.

If any re-employment rights do exist, the injured worker has had to initiate an application to the re-employment branch. Even when the claims adjudicator has made general inquiries regarding the obligation to re-employ, no follow-up action has taken place by either the adjudicator or the case workers.

Even more disturbing has been the growing trend to place injured workers in unproductive and unsustainable jobs with the accident employer on the basis that these jobs are deemed physically suitable. In most cases, our members have been placed in makeshift assistant positions or have been asked to do general cleanup. This goes back to the fact that construction workers are paid relatively high wages to perform specialized and strenuous work but yet have few transferable skills. The end result from the WCB's point of view is that that injured worker is deemed to be in a permanent job with no wage loss. Consequently, due to the provisions regarding future economic loss awards, injured workers are inappropriately deemed.

Employers, workers and their unions must collectively devise realistic alternatives that will satisfy all parties. Injured workers should not have to forgo benefits such as health and welfare plans and private pension plans which they have earned and are entitled to receive. Mediation services in this respect and expert ergonomic reports must be used to work out details of a worker's return to work with an employer, and the injured worker must, where available, be entitled to representation by his or her union or other designated representative who can play a key role in determining the availability and the viability of the suitable work.

1610

While there are elements of the legislation with which we agree, there are several proposed amendments which may be of a more technical nature but none the less cause us grave concern. Issues such as experience rating, the concept of jurisdictional compensation and the elimination of section 93 must be addressed thoroughly and reviewed in conjunction with employers, workers and unions.

With respect to the proposed amendments to subsections 53(10) and (15), we have serious concerns that an uncooperative employer could be in a position to interfere in a worker's vocational rehabilitation program. The case worker, in conjunction with the injured worker, must explore realistic and viable alternative work. The creation of phantom jobs, which have put injured workers and their families in a vicious spiral of poverty and chronic unemployment, must not be permitted. As an alternative to levying higher penalties on uncooperative employers, we would prefer to implement any necessary retraining required in order to return the injured worker to some gainful employment.

In regard to the new provisions under subsections 51(2) and (3), which obligate a physician to provide prescribed information about a worker's physical abilities with the worker's consent and will be based on an amendment to subsection 63(2) to create regulations

which set out the prescribed medical information, we also have several concerns.

While the intent may be to facilitate early-return-to-work programs, we have some concerns as to which physician provides the information. Many times, when we talk about early-return-to-work programs, the injured worker has been seeing his or her family doctor or chiropractor for only a short period of time. While we believe in the concept of early intervention and being proactive in the medical treatment, at the same time these goals should not impede the healing process. Clearly, the WCB must play an integral part in approving all modified work programs. It is up to the board to provide the expertise regarding accommodation and suitability.

Most treating physicians have minimal occupational medicine expertise. Therefore, we must be cautious on how one uses medical information to assist one's recovery versus how any medical restrictions affect the worker's ability to perform his or her work on their return. Bearing in mind that in most cases the impairment has been caused by workplace activities, the intent and the use of the form brought about by section 52 must be thoroughly reviewed.

The spirit and the intent of the purpose clause is fundamental to the existence of the Workers' Compensation Board. Given that most injured workers cannot sue their employers for pain and suffering or for personal injury, the WCB must provide injured workers with fair compensation, health care benefits, rehabilitation services and re-employment provisions. Bill 165 provides a \$200 monthly increase to the lifetime pensions of disabled workers who are unemployed and who were injured prior to 1990. Construction workers, as mentioned earlier, suffer personal financial losses when they cannot return to their pre-accident job. The proposed \$200 increase is limited to workers who were unemployed prior to 1990 and who are still unemployed. We feel that any worker who was receiving a monthly pension and is aged 65 on or before July 26, 1989, should be included. Bill 165 makes no provision whatsoever for this group.

I wish to briefly comment on our displeasure with the process used to select participants in the Premier's Labour-Management Advisory Council discussions on the reform of workers' compensation, and specifically the fact that the construction industry was excluded from the process. It is unfair to be asked to either reject or accept the Friedland formula and the de-indexing of injured workers' pensions without giving all due consideration to the financial burden placed on injured workers.

If one looks back to 1914 when William Meredith first proposed the creation of a workers' compensation board, it was to offer loss of wages, vocational rehabilitation services, health care benefits and survivor benefits to those injured workers in Ontario in a just and timely manner. In turn, injured workers gave up their civil rights to sue their employer. We are greatly disturbed when injured workers must bear the burden of cost for work-related injuries instead of employers in the province of Ontario. All employers across this province, including independent operators, must be made responsible for these costs and should not attempt to negate their respon-

sibility by not paying their assessments. If there is any justification for a cap on the Friedland inflation protection formula and levels of benefits, it must be addressed through a royal commission.

The sections within Bill 165 amendments that deal with the new bipartite governance structure are a welcome change from the present administration. The district council strongly supports equal representation at the WCB board of directors. Just as the WCB has recognized the separate needs of construction workers by creating a separate integrated service unit, so too should there be construction industry representation on the board of directors dealing with policymaking, rehabilitation and re-employment issues and to integrate awareness of accident prevention and education in the workplace.

Finally, we come back to the issue of the construction industry being excluded during the deliberations of the Premier's Labour-Management Advisory Committee. As a result, the concerns of construction workers, primarily on re-employment and rehabilitation, were overlooked, not to mention the general concern on service delivery and the horrendous delays in obtaining and appealing decisions at all levels of the board and WCAT.

Ultimately in less than 10 years, starting with Bill 101 amendments in 1985, the new Bill 162 in 1990 and now with Bill 165, it is obvious that the Band-Aid approach to dealing with the many complex problems with the WCB, be they injured workers' concerns or employers' concerns, is not the solution. With Bill 165 it seems once again we are putting the cart before the horse. If the construction industry is to support any of the amendments under Bill 165, which we do, the royal commission on the workers' compensation system must proceed with a mandate to hear from all sectors of the economy in the province of Ontario, including construction. It must address the entire compensation act and the associated policies and administrations of the board.

Thank you for this opportunity before the standing committee to speak on behalf of the carpenters and drywallers and the district council.

Mr Hope: I just want to refer back to the charts in the back of your presentation that you make. We heard through the presentations of other employers that accident rates are declining. I'm seeing numbers not substantially dropping. If you could explain those charts for me; I know they're not colour coordinated. So I wonder if you'd give us an explanation of the charts you have here.

Ms Crimi: Basically, as the chart shows, you're correct in what you're assuming here. I have similar concerns. While, as I said, there's been a decline in work availability in the construction industry, there are enough serious injuries still going on in construction that have to be adequately addressed.

Mr Hope: So the experience rating program that these employers have been coming and telling us how great it is and we get—they forget to tell you the kickback they get. You know, they tell us how many millions they pay into WCB, but they always forget to tell us how many millions they get back in the process too.

We heard it constantly about experience rating, how

great it's working. The charts you produced to us today say a little different than the story they've been hypothetically talking about.

Ms Crimi: I have to agree. In the four years I've been with the carpenters union, while again there have been some concerns about the availability of work in construction, injuries are still happening. They're serious; they are severe; they're not minor in nature. We have some serious concerns about NEER, the rating system and we have to augment or strengthen the re-employment provisions under the act.

Mr Hope: With the experience rating process, is it possible to hide accidents?

Ms Crimi: If they don't get reported, sure.

Mr Hope: So if an individual doesn't report an accident, it shows in the charts, making the charts look really good. But yet there could be a long-term injury that's there. It might not be one that's identifiable right away, but it could be a long-term—

Ms Crimi: Or they're covered under different benefits. Some injured workers, they themselves through good faith don't think it's a serious accident. They go on to apply for UIC sick benefits. They go onto their private long-term disability plans and do not go ahead, for numerous reasons, to report them to the board, thinking that it's better not to.

Mr Hope: Why would it be better not to—fear of the job?

Ms Crimi: Yes, to some degree. Fear of the system.

Mr Hope: Fear of the system. How about investigators? I asked specifically the group before you if they've hired investigators and ever appealed. They prolong the system. They talk about an operating cost to the system. But yet when you find out through the numbers represented to us, a lot of them are appeals, investigations that are continuing.

I find it very ironic that you're using private investigators with video cameras to check out back injuries. I'm sure that back injuries are a repetitive occurrence that happens in the industry, especially around construction.

Ms Crimi: Well, if I can speak of a specific case of one of our members who recently called me. He was a 26-year-old gentleman who suffered a serious amputation to this right hand. He's fortunate enough to not only be able to handle his physical aspects of his trade as a carpenter, but has some supervisory capacities also, and was fortunate enough to find more suitable work with another employer. The accident employer has sent out an investigator questioning why this gentleman does not want to stay, I guess, on workers' compensation or wait until they have some suitable modified work for him. He's gone on with his life and it's almost as if he's being penalized for it.

1620

Mr Mahoney: Thank you for your presentation. I'm interested in your comments on page 5 with regard to your displeasure with the process used to select participants in the PLMAC process. Many of those participants have been before this committee to comment on their disappointment, I guess, in the fact that the bill does not

reflect the agreement. Mr Sid Ryan, Mr Buzz Hargrove both quit that august body over concern with the social contract implementation that Mr Rae and this government brought in against all public civil workers.

It's been suggested to me that the \$200 a month that is basically being funded through de-indexing of injured workers' pensions—so in other words, taking part of an injured worker's pension away and spreading it out among others—is in fact the social contract for injured workers. What do you think of that?

Ms Crimi: I'm not privy to answer such a question. I certainly was not there at the Premier's Labour-Management Advisory Committee, how things came about. Certainly I support the concept of giving those injured workers who were denied proper vocational rehabilitation some increase in their monthly benefit. I mean, that's fundamentally what the intent is and that certainly I support.

Mr Mahoney: Clearly, though, the money is being taken away from other injured workers. The de-indexation, the Friedland formula does that. The original agreement in the PLMAC group was to use the funds, the \$3.3 billion generated by the Friedland formula, to reduce the unfunded liability. Also, instructions—

Ms Crimi: But the Friedland formula came about through some collaboration or negotiations—

Mr Mahoney: Right. An agreement.

Ms Crimi: —that went on at the committee.

Mr Mahoney: Exactly.

Ms Crimi: Again, I was not privy to those discussions; no one in the construction industry was.

Mr Mahoney: I appreciate that. We've had representatives of both management and labour in construction here before this committee two weeks ago. The suggestion came, actually, from the labour group, from the international labourers' union, of setting up a separate committee that would deal specifically with construction issues around workers' compensation. The people from COCA were here as well, and they agreed with that idea. Have you or people in your organization talked about that and do you see some advantage to doing that?

Ms Crimi: Again, we haven't been approached by anybody. I think it may be the only alternative to deal with the uniqueness of the construction industry, to bring those players who are familiar with the industry together to discuss the issues of prevention and re-employment and reinstatement rights. In that respect, it may come to that, that we will have to set up our own separate committee. But again, we've not been approached.

Mr Arnott: Thank you very much for your presentation; we appreciate it. I remember sitting on this committee about three years ago and we dealt with the WCB service delivery problem, and the member for Sudbury, I know, remembers that very well.

Ms Crimi: So do I.

Mr Arnott: And in those days, the New Democrats still had their idealism and their sense that if only they could grapple with the problems the problems would disappear. But in spite of their best efforts, after four

years, it appears that there are still fundamental problems with workers' compensation. I think the fundamental problem is there's still too many accidents taking place. If we could reduce the number of accidents, we would reduce the stress on the system. Pretty simple, and I think it's desirable public policy that we encourage the reduction of accidents in the workplace.

We hear from employer groups that the best way to do that is through the experience rating system. This bill will change the experience rating system to bring in a more audit-based approach, away from the practical results that used to be the standard. Do you think that's a good idea?

Ms Crimi: No, I think we have to keep experience rating in order to be able to assess how successful we are in prevention and in health and safety. Certainly we have to encompass the Occupational Health and Safety Act when we are also dealing with workers' compensation, but experience rating is needed in order to assess the successfulness and severity; at the same time, we have to address the issue of re-employment.

Interjection.

Ms Crimi: I'm talking experience rating, absolutely; not NEER.

Ms Murdoch: Oh, I see.

Ms Crimi: There's a difference.

The Vice-Chair: Thank you for your presentation this afternoon.

DURHAM REGION INJURED WORKERS GROUP

The Vice-Chair: I'd like to call forward our next presenters, from the Durham Region Injured Workers Group. Good afternoon and welcome to the committee.

Ms Fran Standingready: My name's Fran Standingready. I'm an injured worker. I'm the president of the Durham Region Injured Workers Group and I'm a member from the vocational rehabilitation advisory committee.

My summation to the standing committee on resources development on Bill 165, An Act to amend the Workers' Compensation Act:

Before the creation of the Ontario workers' compensation system, workers who suffered work injury had little income protection. As well, very few health and safety advances existed for workers. Workplace accidents caused huge numbers of deaths and major disabilities to workers. Employers were not required to look after their workers who were hurt in their factories. Once workers were no longer able to do the job they were hired to do, they were fired. The disabled workers and the spouses of the deceased workers were often left without any way of supporting themselves. The usual result of a major injury was lifelong poverty.

Very few workers or survivors could successfully sue their employers, even though most accidents were the fault of the employers' unsafe working conditions. Most workers could not afford the cost of lawyers that would let them take their employer to court. Even if they got to court, the courts of old were not a friendly place for workers.

These injustices, along with low wages, long working

hours and poor working conditions, led to the expansion of unions in Ontario. These unions fought to improve laws to protect workers.

The first attempt to deal with the problem in Ontario was to pass the Workmen's Compensation for Injuries Act in 1886. This act modified some of the defences available to employers but severely limited the amount that a worker could recover in damages. The act also placed some other limits on the right to sue.

Employers had difficulty with the act because it made it easier for workers to sue successfully, and if a worker's action was successful, it could bankrupt the company. Workers and others were unsatisfied with this act because most injured workers still were not compensated. Even those who were eventually successful in suing had to wait a long time to recover their money, and a great deal of the money recovered ended up being spent on legal fees.

The pressure was on the government of Ontario to do something. In 1912, the Ontario government commissioned Sir William Meredith to study ways to deal with workplace-related disabilities and deaths. In his final report in 1914, Meredith proposed that the workers' compensation system be set up in Ontario.

After listening to the demands of employers and labour, Meredith made his recommendations. Most of these recommendations were a victory for labour. Meredith proposed a compensation system based upon the following principles. Most of these still apply today.

Security of payment: The worker was guaranteed compensation for as long as he was impaired.

No-fault system: It would not be necessary to prove negligence in order to receive benefits.

Employer-funded liability: The vast majority of employers would contribute to the fund from which benefits would be paid. This protected small firms from potentially high costs of serious accidents.

Administration by an independent agency: This was the way of the beginning of the Workers' Compensation Board, or the Workmen's Compensation Board as it was referred to then. Only in exceptional circumstances were the courts to have any role. Workers were to be spared the expense and delay of litigation.

Injured workers could not sue their employers: In exchange for the establishment of workers' compensation, workers gave up the right to sue their employer. This is often referred to as the historical trade-off. Eventually, this limit on suing was expanded so that most injured workers could not sue most employers either. This means that workers' compensation is not welfare; workers' compensation is a right. Workers fought for this right and we gave up valuable rights to win this.

1630

The present Ontario Workers' Compensation Act is based on the model created in 1915 as a result of the Meredith report. Over the years, the act has been amended several times and benefits and services available have changed. Much of the framework remains unchanged, but certain changes, particularly under Bill 162, have created some major changes to the benefits structure.

This brings us to April 14, 1994, and the recommendations made in the Legislature and why we are here today, to speak on the changes to the act and the effect on injured workers today and in the future.

We all remember the Holocaust and the human tragedy that the Jewish people suffered. We remember how they were lined up and shot, gassed and tortured in concentration camps, and we think of how wrong this was and how horrifying it was. Injured worker face their own holocaust of sorts. Although our suffering may not compare, injured workers also suffer the death of the human spirit. We are the living dead. The injustices we have suffered at the hands of the WCB have left us this way.

What am I talking about? I'm talking about a system that thinks injured workers are liars and fakes. I'm talking about a system that thinks that injured workers are lazy and unwilling to work. I'm talking about a system that thinks our doctors lie on behalf of workers on WCB forms and letters. This is the one person whom we entrust our lives and our families' lives to. I believe that our doctors should have the final say in deciding the course of injured workers' futures. These are the professionals who first see us upon getting injured and these are the ones who care for the injured worker throughout our disability. They are the ones who know our physical and emotional disabilities. They see us on a regular basis. They know when we are ready to go back to work, vocational rehabilitation, and what form of vocational rehabilitation is best suited for our disabilities. The board doctor rarely sees us, and only then for a few minutes. Again, more transportation costs.

Injured workers are stuck between our doctors' restrictions and the board's policy of cut-off for so-called uncooperative workers. If I follow my doctor's restrictions, I'm called uncooperative, but if I follow the board's suggestion and go back to work before I am ready, then I stand a good chance of becoming permanently disabled. Where's the no-fault in that?

This from a system that doesn't have to face any consequences for its actions. Under the WCB act we cannot sue anyone at the board for wrongdoing, but we as individuals can be sued and our doctors can be sued.

I believe that the board should be accountable for the decisions it makes. They are dealing in human lives. What about the bad decisions made by the board? What about the cost to correct these decisions? We are talking about millions of dollars and, most importantly, human suffering to the injured worker and his or her family. We need accountability at the board now. We need accountability for the actions of board doctors, adjudicators and vocational rehabilitation workers. I want anyone handling an injured worker's file to be accountable.

When the board, as an employer, fails to train its workers properly, how can you expect the workers to make good decisions and act in a professional manner? Board workers have a lack of training. Six to 10 weeks of training for a board adjudicator is not enough. Why not train injured workers to work at the board? We are smart enough, some of us are physically capable of doing the job, and who better to understand what injured workers are put through?

The WCB hasn't worked in many years. It is the only system that I know that doesn't turn to its experts for help. The system doesn't work. If your sink is plugged, you don't call a gardener; you call a plumber. Then why are injured workers not called upon for their expert advice? The Ontario Network of Injured Workers Groups has experts to deal with the problems at the WCB. When the PLMAC sat down at the table to discuss the WCB reform, there were no experts at the table. Injured workers were not asked to the table.

We do know what's wrong and we do have solutions. All we need is to be heard, and right now we're not being heard. So the problem goes on and everyone suffers: injured workers suffer, adjudicators suffer from overwork and lack of training, and business suffers because of the costs of overturning decisions. We need to make the right decisions in the first place.

Who wants to be on compensation in the first place? Who wants to suffer the loss of their family, the loss of their home, the loss of their health? Who in their right mind would want to suffer these indignities?

The important thing in my life is my personal dignity and my family. Without my dignity, I have nothing. Without my family I have nothing—they are blended together. When you strip a human being of their dignity, you create emotional problems. This is why in the beginning of my time with the board, because of the treatment by the WCB and the loss of my family, the only solution that I could see was to kill myself. I placed a .303 rifle in my mouth and was ready to kill myself. This was the third attempt. I lost everything. I will never be the person I was again; never.

Am I to be punished for it or am I to be compensated for it? This is the decision that the board makes: to punish me or to compensate me. The board cannot give me back my lost time with my children, the lost time with my husband. The board can never give me back the moments that I've lost with my family; they are lost forever. No one has the right to take my dignity away because I became injured.

You ask the question, why do injured workers commit suicide? Well, let me tell you why. You have stripped us of our human dignity, that is why.

Within the Durham Region Injured Workers Group we did a survey of 200 workers. Of these workers, 87% had suicidal feelings as the result of injury and dealing with the board. If the system was conducted in a professional manner and we were treated as human beings, if we weren't treated as a piece of meat as the meat chart suggests, maybe you wouldn't have the human tragedy that you have at the board today.

The injured workers' movement has been my salvation. This is where I found my dignity once again. I have gotten my family back. Injured workers are my people. They understand what I am going through. They understand my pain. They have helped me to find myself again. They suffer the same indignities as I did and they suffer the same injustice as I have. I regained my dignity by working with injured workers for injured workers and I began to dream of a system that would treat people as human beings, that treated us with respect and dignity, a

system that had people working for them who conducted themselves in a professional manner, that had resources. I dream of the day when the system is fair and just for all injured workers, employers, government and WCB staff.

Right now, they are trying to put a wedge between injured workers in de-indexing us. Does the act not say full compensation for all? Am I not equal to the man or woman beside me? I cannot support de-indexing because it is not fair and just to all injured workers, past, present or future. Some of us will get an increase of \$200 and some of us won't. Some of us had the supplement but we have had it taken away. If the \$200 is tied to the supplement, some of us on pensions will not receive the \$200.

We are below the poverty line. Our incomes are below the incomes of people on welfare. Many of us are going to suffer if the increase is tied to the supplement. Many of us will lose the supplement because the board will deem we're employable. Is this right? Is this fair? Is this just? All the people who are on pensions should receive the \$200 supplement. There are those of us who are on pensions who are not working that will not get the \$200 increase.

I receive \$315.53 per month for a 25% disability. Can you live on that? And there are some of us who get less than that. As a single person on welfare, I would get \$620 a month. Even though I have a family I am below what a single person on welfare gets. I once got the supplement, yet because the board has deemed me fit to work, I will not get the \$200. The board says that I am fit to work, but the doctors and specialists I deal with know that I am not fit for employment.

Even with my pension of \$315.65 and the \$200 increase attached to the pension, I would still be below a single person on welfare. I'm asking you, is this fair? I believe that all on pension should receive \$200 with or without the supplement. The \$200 should be attached to the pensions.

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We have all heard employers talk about the phantom unfunded liability. Well, what I hear when the employers talk about unfunded liability is that they don't want to take responsibility for their injured workers. Then who is responsible? It is because I was working for an employer that I became injured. I wasn't born this way. It is time that all employers in Ontario accepted the consequences of injuring their workers. I believe that all employers in the province of Ontario should be paying workers' compensation premiums. The way the system is right now, only some employers are paying premiums. I do not feel that it is fair to the employees of those companies that are not paying workers' compensation their fair share. I believe we need one system for all injured workers.

How do you fix the system? With prevention. Let's stop talking about unfunded liability and let's start looking at ways to prevent accidents and injuries from happening. The best solution to the whole problem is to stop injuring, maiming and killing workers on the job. Here are some suggestions towards that goal.

Let's stop talking about unfunded liabilities and let's

start looking into investing in prevention. Business can make millions of dollars in cutting deals and making more profit. Well, let's take some of this money and spend it in fixing the problem. Let's start with hiring more health and safety investigators, more professionals in ergonomics, paid for by the province, and more health and safety committees in the workplace which train the employees in safety issues. Instead of talking about health and safety, I want to see action around health and safety. We have health and safety provisions now, but there's not enough enforcement. We need stricter enforcement of the existing laws. Let's look at making the current provisions work and look at ways of improving on what we already have.

Let's get rid of the duplication in the system. For example, let's eliminate the duplication system of doctor and satellite vocational rehabilitation programs in the community. Instead, give injured workers' groups more money to design and staff vocational rehabilitation programs. Who better to do the job? With this system you really get injured workers back to work.

Vocational rehabilitation staff should be trained and supervised by those who are knowledgeable in the field. For example, someone with knowledge in the field of construction should be there to train staff on the functions of their field and whether it is suitable for an injured worker to return to this type of job with his or her specific injury. There should be accountability to someone within the WCB who has the expertise in vocational rehabilitation and understands not only the service but also the injured worker community and vocational rehabilitation itself.

There should be access to up-to-date labour market information and retraining programs. We should develop province-wide labour market information and establish links with community organizations such as regional trade union councils. They best know what's going on in their market in their community.

Adjudicators and vocational rehabilitation workers are now overworked. With their present case load, how can they be expected to do a good job? The case loads of the board workers should be reduced, and we should have only one person handling injured workers' files from beginning to end instead of the current practice of going from person to person with nothing really happening to a file. As it stands right now, there is no time for the adjudicator of voc rehab worker to help the injured worker get back to work.

Vocational rehabilitation staff should have a higher profile within the board. Right now voc rehab people are at the bottom of the WCB hierarchy. They should be in more positions of authority at the top level of the board. Vocational rehabilitation holds the key to returning us to the workplace and finding meaningful employment, because all injured workers really want is to go back to work.

Mr Mahoney: Thanks for your very detailed presentation. You make a number of suggestions in here on—I guess the pages aren't numbered, but you talk about accountability for the actions of the board doctors, adjudicators and voc rehab workers. You talk about better

training for adjudicators; you talk about elevating the position of voc rehab workers, all of which are around the service delivery section to deal with injured workers.

Do you see anything in Bill 165 that does even one of those things that you've suggested?

Ms Standingready: Not really. The only thing that comes to mind is the re-employment part of it, which I think is not too bad, but I could see that being strengthened even more, because employers simply do not bring us back. If they got the ergonomics into the factories and into the offices and they looked at designing these offices and factories in a little bit better manner than what they do today, maybe some of us injured workers could get back to some of these offices and some of these factories. Unless employers sit down with us, the injured workers, service delivery at the board isn't really going to change things. They have to talk to us.

Mr David Johnson: I too would like to thank you for your deputation, obviously born of personal experience and your emphasis on prevention, and your suggestions in terms of making the system more efficient certainly.

To go back again perhaps to your comments about the adjudicators, it seems that in the deputations that I've heard from injured workers the role of the adjudicator comes up again and again, and the impression that I'm getting is that, in terms of injured workers dealing with the system, that's the friction point or that's the point of most concern. It may not be because of the adjudicators themselves; it may be because they lack experience or they haven't had enough training. I'm not sure. But is that what you're trying to convey to us, that the adjudicator is the real friction point?

Ms Standingready: Yes. Voc rehab people will put us into a voc rehab program that is for an individual person. I can give you a very quick example.

We had an injured worker who was put on a voc rehab program, who went out and found employment, asked for an extension on his voc rehab because the employer was willing to modify the job for the worker but he needed an additional period of time to train him on the specific job. Voc rehab approved it; the adjudicator overturned it. This man has no job and is now cut off his benefits. Had they listened to voc rehab in the first place, he would be in a viable job today receiving a good salary and would no longer be needing the services of the WCB.

Mr Hope: First of all, I'd like to thank you for your presentation today. It expresses the viewpoint of an injured worker, the frustrations you go through with the board. If it was fortunate enough that the employer had created a safe working environment, you would have never had this experience nor your human dignity destroyed or stripped from you.

In an earlier presentation made by the independent business association, they clearly say that what we need to do is cut benefit levels of injured workers and it will get them back to work. They don't want to work; they make more money on WCB than they do take-home pay from working.

These are the kind of comments that are coming from a business community who is supposed to be acting as a

part of a process of rehabilitation, getting people back to work, and this is the approach that they're taking. They're saying the unwillingness on the part of people to return to work—if I'm reading the presentations properly—is that the injured worker can make more money at home than he can by going back to work.

I read your comment very clearly. It said: "Who wants to suffer the loss of their family, the loss of their home, the loss of their health? Who in their right mind would want to suffer these indignities?" I listened to Ms Swift and other who have come forward from the business community saying, "Just cut your benefits; we'll get you back to work sooner." I'd just like your opinion.

Ms Standingready: What part of my \$315.53 is too much money? I'm below welfare. Welfare is classed poverty line, and I'm below that. What part of my cheque each month is too much?

The Vice-Chair: On behalf of this committee, I would like to thank the Durham Region Injured Workers Group for their presentation this afternoon.

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INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793

The Vice-Chair: I'd like to call forward our next presenters, from the International Union of Operating Engineers, Local 793. Good afternoon and welcome to the committee.

Mr Richard Kennedy: Good afternoon and thank you for allowing us to make this presentation. My name is Richard Kennedy. I'm the president and assistant business manager of Local 793. I have two people with me, Ken Lew and Marnie Niemi, who both work on a personal level with our compensation claims with the members.

Local 793 is a provincial union. We represent in excess of 10,000 members. The majority of our membership are engaged in the operation, repair and maintenance of cranes, shovels, bulldozers, similar heavy equipment throughout all sectors of the construction industry. We also represent employees across the entire employment spectrum, including employees in municipalities, scrapyards, industrial cleanup and cleaning contractors and waste disposal companies.

On an industry-wide basis, construction is Ontario's second-largest employer of workers, next only to the retail trade industry. Based on 1991 Canada census data, 658,000 workers make their living from construction in the province. This includes tradespeople, engineers, architects, suppliers etc. This works out to roughly one out of every eight Ontario workers. Also in 1993 almost \$33-billion worth of construction work was performed in Ontario, more than any other province, and made up more than a third of all construction work purchased in Canada.

Without a doubt, many Ontario workers derive their employment either directly or indirectly from the construction industry. Consequently, the effect of Bill 165 on our industry will be significant.

In order for this committee to fully appreciate the impact of the proposed changes on our members and other construction workers in the province, it is necessary

to sketch briefly the unique characteristics of our industry and how it differs from the industrial sector. We believe this is particularly important, especially in view of the fact that construction industry representatives were not part of the original negotiations which eventually formed the basis of Bill 165.

In 1962 the Royal Commission on Labour-Management Relations in the Construction Industry of Ontario identified three ways in which construction differed fundamentally from manufacturing:

(1) The construction industry was subject to seasonal and cyclical fluctuations in the economy;

(2) The workforce was characterized by mobility, flexibility and the specialized ability to perform construction industry tasks; and

(3) The products generated by the construction industry were not easily transferred from place to place so that typically, workers moved from job site to job site. In the manufacturing industry, the location of the work does not change; it is the product that moves.

These characteristics remain as true today as they were 32 years ago.

With this framework in mind, we would like to begin the presentation by applauding the provincial government in recognizing that the workers' compensation system is one in need of a major overhaul. Bill 165 captures the main areas of consensus reached by the Premier's Labour-Management Advisory Committee. More importantly, it makes a good attempt at balancing the Workers' Compensation Board's twin challenges: maintaining costs and making the system fairer to injured workers.

In terms of achieving real fairness in the system, we particularly favour the purpose clause, section 0.1, as it will be of benefit to our members in their dealings at all levels of the board. This clause finally addresses what many of our injured workers have been denied for years; that is, reasonable compensation and equal access to rehabilitation services. Having this purpose enshrined in the legislation itself will give injured construction workers some leverage in their claims and the confidence that fair treatment lies at the heart of the board's mandate.

The bipartite board is an amendment which also pleases Local 793 in its attempt to placate both labour and management, by giving each an equal voice in determining the Workers' Compensation Board's policies. The bipartite structure is commonly used in our industry with great success. Health and safety committees, grievance arbitration boards and many government tribunals such as the OLRB all have adopted this format. In fact, the trustees of Local 793's pension and benefit plans and training trust fund are jointly represented by labour and management. With the bipartite board both labour and management will be on equal footing to make the system more effective and responsive.

Since we live in a dollars-and-cents world, we'd like to discuss what for us is perhaps the most important amendment for our members.

Subsection 147(14) allows an additional \$200 a month to injured workers on pensions who are in receipt of the

equivalent of old age security. We feel that this is an issue of primary concern for the members of Local 793.

To understand why this particular change is so important, the committee must appreciate the incredible injustice that the system put upon our permanently disabled members who were injured prior to 1990. Through no fault of their own, these members have been financially devastated simply because they worked in construction. Why? This goes back to the unique characteristics of our industry as noted earlier. When those characteristics are combined with the fact that our members are paid relatively higher wages to perform specialized and strenuous work but yet have few transferable skills, the end result had the effect of automatically denying them access to rehabilitation services because they, according to the Workers' Compensation Board, could not approximate their pre-injury earnings if the Workers' Compensation Board was to offer training.

In other words, when the Workers' Compensation Board deemed that our injured worker could only earn, as an example, \$9 an hour as a parts assembler, and that this didn't come close to their previous wage, they were consistently cut off the system with no other help. Instead, they were simply given a subsection 147(4) supplement, presently at \$387.74 per month, and a small pension, nothing else.

Clearly, the system failed them terribly. These members can no longer work at their trade because of their permanent injuries; many have families to support; and like all of us have bills to pay. Yet the Workers' Compensation Board closed the door shut on them. I ask you, where is the fairness in this?

The \$200-a-month pension increase is in Bill 165 to right this past wrong. In no way will this rectify what the system has put them through, but at least it will provide some financial relief and give hope to their standard of living.

The next point I'd like to address is the Friedland formula. This is another aspect of Bill 165 that will dramatically affect the income of our members. Subsection 148(1) deals with the de-indexing of pensions to 75% of the CPI minus 1%, with a cap of 4%. This is problematic in several ways.

First, most of us will collect our pensions from work at the age of 65. When we retire, we only have approximately 20 more years to live. What about the worker who was 40, 30 or 20 years old when they were awarded a pension? To de-index permanently disabled workers to a lifetime of increasing poverty is anything but fair compensation.

Second, to put a limit of 4% indexing is frightfully unjust. This low percentage will continue to penalize further in times of high inflation. As the cost of living rises, injured construction workers will be caught in a downward spiral year after year. This aspect of the amendment is most certainly not in keeping with the purpose of this act as outlined in section 0.1.

We are well aware that the Workers' Compensation Board is struggling financially and changes must be made to get the Workers' Compensation Board back on its feet.

Cutting benefits by implementing the Friedland formula is not the answer. Pure and simple, this approach would be reforming the system on the backs of those who need help the most and that's the injured workers. In our view, the answer lies in strengthening those sections in the act that address prevention and re-employment. Preventing accidents must be the number one priority. Only when total accident frequencies begin to decline, and those who are injured get re-employed by their employer more quickly, will you achieve a true balance between fair compensation and fiscal responsibility.

In short, we agree with certain aspects of the legislation which have been outlined for you. However, there are amendments of a more technical nature which cause us concern. These are the experience rating, the concept of jurisdictional compensation, the absence of union representation in the vocational rehab process, and the fact that the re-employment obligations of employers have not been strengthened for the construction industry. How can we attempt to lower the unemployment rate of injured workers, which currently stands at 40%?

Further, in our view, several other problem issues need to be addressed in the proposed legislation. The deeming provision as it applies to future economic loss serves only to further reduce income of workers who have not returned to a phantom job and continues to be a punitive measure which hurts more injured construction workers than it benefits. With regard to experience rating, there need to be stronger provisions which penalize employers who fail to fulfil their obligations to re-employ injured workers fully. In fact, employers who encourage their employees to collect private disability insurance and not file Workers' Compensation Board claims are doing so at an alarming rate. Many employers are exploiting loopholes in the legislation to avoid higher assessments and rely on the board's slow administrative process and inaction to levy penalties.

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The current funding ratio of 37% would be better addressed if these employers paid their fair share. Section 103.1 of the proposed changes is a move in the right direction in terms of closing existing loopholes. Strict enforcement of the experience and merit rating programs, however, will be crucial if the programs are to be truly effective. We trust these matters will be the focus of the royal commission, and Local 793 looks forward to discussing them in the future so that labour, management and government can work together in developing a fairer compensation system, one which more accurately reflects the needs of the construction industry and our society as a whole.

We have attached an appendix which details our position concerning these and other changes contained in Bill 165, and again, I thank you for your time.

Mr David Johnson: Thank you very much, Mr Kennedy. I certainly appreciate your deputation today. I'm just flipping towards the end of the deputation. You mention that workers are being returned to a phantom job. This is the second time today, and I guess many times it's come up during the course of the hearings about the concept of the phantom job. Why, in your

estimation, are phantom jobs being created by the employer, as apparently this is your view? I'm just wondering why you feel this is happening, as opposed to employers creating—well, I shouldn't say "creating," but as opposed to the employers returning an injured worker to a real position.

Mr Kenneth Lew: First of all, it's not always the employer that's designing the phantom job. In many cases it's the process at the board and the vocational rehabilitation services that are available that create the phantom job.

Our position is that in many cases, because of the uniqueness of our industry and the characteristics of our workers and the skills they have, in most cases there is no phantom job or there is no job, period, and in many cases, and what Richard explained is, that phantom job in most cases does not approximate the pre-injury earnings of our workers. That again is a result of the uniqueness of our industry. So to that effect, regardless of whether the phantom job is there or not, with the way the board processes right now, they're automatically denied rehabilitation services.

Mr David Johnson: You have some very unkind things to say about Bill 165, particularly the Friedland formula. You call it "anything but fair," "frightfully unjust," and "reforming the system on the backs of the injured workers." You must have gone through a lot of soul-searching to be able to support Bill 165, which you apparently do, even with comments like that. I personally don't understand how you can support Bill 165, given your views particularly on the Friedland formula.

Mr Kennedy: Sitting in the back there, I've heard the word "negotiations" and so on and so forth. In negotiations you always have to accept what's there sometimes that has happened through the process, and we think that Bill 165 is a step in the right direction. However, we would like it strengthened in certain aspects.

Mr Waters: The phantom job thing that Mr Johnson brought up, I think it's section 54 or something of the act where they can deem jobs. That's what you were getting at, wasn't it, that part where we always have these phantom jobs, whether they're there or not? I thought that's what you were after.

I've sat and listened to a number of people come before the committee and they've talked about the NEER payments and I've listened to some of the construction people, and I'm trying to understand. Are the payments based on historical assessment or on bodies working at that day? I think what's happened in the construction industry, if I'm hearing a number of the deputations correctly, is that the employers received a lot of dollars back but really their employees weren't working during the recession, so no wonder their numbers were down. I'm wondering if that is indeed the case, or is it on today's figures?

Ms Marnie Niemi: If I can address your question, you are indeed correct when you state that their numbers are not indicative of actual accident rates happening out there, specifically because we've seen already today, in today's deputations, varying degrees of accident frequencies. For example, the carpenters showed in their

statistics, which came directly from the construction integrated service unit, that construction's accident rates had not decreased despite what we have seen earlier on today generally within other industries as well.

I think the point of that, you've made it quite clearly, is that it's simply a matter that people aren't working, that the numbers aren't there and that the results that we're seeing are not indicative of what's actually happening. As you've heard further in our deputation earlier today, there are loopholes within the system through which employers continue to abuse the experience rating system as it exists right now in that they do not report all accidents as they're occurring. We've seen that happen time and time again at quite an alarming rate.

Mr Waters: So the misuse of the loopholes are, shall we say, feeding the dollars back through NEER when you really didn't have people working and all of that.

Ms Niemi: That's right.

Mr Waters: I understand last year it was \$150 million out of direct operating, so wouldn't that affect the unfunded liability of the WCB? Wouldn't it drive it up?

Ms Niemi: One would hope so, depending on how you look at it. I think what we're seeing with regard to the proposed changes is we're looking at the broader picture in terms of employers paying their actual fair share and it being reflective of what is actually happening within their workplaces. I think the proposed legislation is definitely a step in the right direction as it addresses other issues within the actual work site, be they health and safety records, participation in return-to-work programs and cooperation with vocational rehabilitation services.

Mrs Joan M. Fawcett (Northumberland): Thank you for your presentation. I've been listening carefully over the past two weeks because there have been numerous presentations, as you are aware, from the various unions and locals around, and most would say that there are serious flaws in the bill. We have the famous one where there were 17 changes, and some of the language is pretty strong, where you would be against the bill. Yet I'm assuming that you would be going along with all of the others who are in support of the bill basically, that you would support the bill yet you have all of these things that you'd like to see changed.

I'm just wondering, are you supporting the bill because you feel confident that the government is going to accept your changes? Is that why you would support a bill that would be so flawed, according to most? I'm just trying to understand. Is it because you feel confident that the government is going to support the changes, or are you guessing, along with the rest of us?

Mr Kennedy: No. I've been through this process before, making presentations to numerous committees; I look around the room and see several of you who have sat on it before. Any one presentation I don't think is going to sway anybody. You have to weigh the odds of everything that comes in. But, no, I don't have any specific confidence that any one specific group or a specific building trades group's suggestions will get taken along. There have been some suggestions made that a

separate building trades unit be struck, a construction unit I guess is probably the proper word, and we would support that. I think that kind of dialogue coming out would have a significant impact on a committee, but whether we have any confidence that anything's going to get changed, that's in you people's hands. You are a committee and we have to live with that, but again, it is a step in the right direction and we think it's a progressive step, despite our criticisms of it.

The Vice-Chair: Mr Mahoney, a brief question.

Mr Mahoney: It's actually not in our hands, Richard; it's in the majority government members' hands, whether or not they accept—

Mr Kennedy: I have faith in democracy.

Mr Mahoney: —anything you've got to say or we've got to say, and with the arrogance that they show, we don't expect it.

On page 3 you say that you're happy with the purpose clause because it includes reasonable compensation and equal access. Would you agree that that still will require a subjective decision and whether or not it's stated in a purpose clause it's open to interpretation, that there's nothing in this bill to deal with better training of adjudicators or other staff in the WCB, or to smooth out the service delivery system in the board?

Mr Kennedy: We have been working through the integrated services board to try and do that for the construction industry on an ongoing basis.

The Vice-Chair: On behalf of this committee, I'd like to thank the International Union of Operating Engineers, Local 793, for your presentation this afternoon.

1710

SERVICE EMPLOYEES INTERNATIONAL UNION

The Vice-Chair: I'd like to call forward our next presenters, from the Service Employees International Union. Good afternoon and welcome to the committee.

Mr Robert Davidson: Good afternoon. My name is Robert Davidson and my colleague is Mr Alan Turner and we're staff representatives with the Service Employees International Union.

To begin, we'd like to take the opportunity to thank the committee for the opportunity for us to present our views on Bill 165. The Service Employees International Union currently represents approximately 45,000 employees or workers in the province of Ontario. Approximately 27,000 of those are in the health care field in nursing homes and in hospitals. A further 11,000 of them work in homes for the aged and municipal homes for the aged.

On Bill 165, the Service Employees International Union is an active participant in the standing committees of the Ontario Federation of Labour, namely, the health and safety committee and the workers' compensation committee, and we support the presentations already made before us by the Ontario Federation of Labour.

The Service Employees International Union also welcomes the setting up a royal commission to look into the problems of the workers' compensation system. The SEIU also supports the legislation's commitment to

moving the board to a bipartite organization, and we see it as a positive move.

We represent workers, as we see, in the low end of the economic scale, and in this day and age it takes all of our efforts and energies to keep the members employed and living above the poverty line. If a worker becomes ill through work-related circumstances, it is essential that an adequate safety net is available to them. At this current time, our members on average earn approximately \$25,000 annually—and that's before taxes. At 90% of net, those individuals would be clearly below the poverty line.

In the areas where our members are employed, mainly in the health care industry, these particular members, if you look at the Occupational Health and Safety Act, which now requires core certification training, require three weeks of core certification training. Hence, that would give some idea of the type of work, or the hazards involved in the work being done, by those individuals.

The reform of Bill 165 is a start in the right direction, as far as the Service Employees International Union is concerned, but there is still this characteristically annoying tendency to shut out some of the people who are meant to receive benefits from this bill and who are not going to receive those benefits.

Bill 165 provides for a \$200-per-month increase in lifetime pensions for disabled workers who are unemployed and who were injured prior to 1990. However, it excludes workers who were over 65 when Bill 162 was passed and are now over age 70. If anything, this group needs it more than most and should not be denied some additional comfort at this time in their lives.

Although Bill 165 provides for a \$200 pension increase for 40,000 disabled workers, and 100% CPI inflation protection for 45,000 workers who are unemployed and not likely to return to work and their survivors and dependants, it still puts a cap on the pension of 134,000 workers who receive WCB disability pensions and have returned to work, and workers injured after 1990 who have access to the strengthened return-to-work and vocational rehabilitation provisions.

If I might, just to summarize, we understand that we need to make the process economical, but shutting out a smaller number of workers or reducing their benefits is a case of being penny wise and pound foolish. Experts around the world agree that cutting benefits would not make the compensation system healthy. There are only two proven methods of doing so and that's prevention and re-employment.

In all the years that this union has been negotiating for its members, one message has come clear constantly: that they want to work. Hence has come the issue of re-employment.

Just as an example, if I may at this point in time, in the nursing home industry where I am actively involved in negotiating contracts and also dealing with workers' compensation issues, we have a constant battle with the employers on the issue of re-employment. The argument that we receive from the employers time and time again is that they're on a fixed budget, they only receive

funding which grants them a certain amount of hours per day for staffing and they don't have the funds available to re-employ injured workers, hence creating a larger unemployed population. I have numerous cases that I handle personally where I have workers who have been deemed fit to return to work by the board who have not been returned to work.

One of the central points to our presentation is the issue of coverage. The Service Employees International Union currently represents approximately 1,100 workers in the racetrack industry. Just to give you some idea of the locations: Local 528, which is at Flamboro Raceway, represents approximately 639 workers; local 204, which is in Metropolitan Toronto, approximately 300 workers; Local 532, which is also in Hamilton, approximately 30 workers; Local 639 in Windsor represents approximately 150 workers, and Local 210, which is also in Windsor, approximately 50 workers.

All of these workers are deemed to have fallen under the agricultural workers' act. Hence they are excluded from the Workers' Compensation Act as far as coverage. Interestingly enough, all these workers fall within the jurisdiction of the Ontario Labour Relations Act, which also excludes agricultural workers.

In conclusion, workers who become ill or injured are one of the most vulnerable groups in our society and there is an obligation on all of our parts to ensure that they are treated in a just and fair manner. There will always be too many workers on compensation—one is too many—however, if that is the attitude, the cause of the problem must be sought and solved. The injured workers must not be penalized.

Workers are becoming ill and injured at an alarming rate and this must be remedied. Health and safety must be taken seriously, laws must be made even stricter and must be vigorously enforced. At SEIU we have been waiting 14 years for health care regulations and we are currently fighting another attempt to shelve them.

If this government wants to cut back on workers' compensation payments, then here's one glaring opportunity: put the regulations into effect. Stop the curtailment of health and safety inspectors and start using them to enforce instead of educate. This is the way to cut down illnesses and injury, not by limiting pensions and entitlement.

This is respectfully submitted by the Service Employees International Union.

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Ms Murdock: Thank you for your presentation. In all of the places that you represent, do any of them have a return-to-work joint committee? We've heard from other locals that have joint return-to-work committees that have been working very well and I was just wondering whether or not you had any at all.

Mr Davidson: Our experience in the health care industry, no, we do not have joint return-to-work committees. We do have language within our collective agreements that protects workers' return-to-work rights for a maximum of 30 months in the hospital industry; 24 months in the nursing home industry. But an actual

committee struck within the workplace, there is none.

Ms Murdock: So all of your others, in terms of cemetery workers, racetrack workers, day care workers, maintenance and cleaning workers, none of those either.

Mr Davidson: No.

Ms Murdock: This afternoon we had a presenter telling us—and, actually, I don't disagree—that people who are off on workers' comp claims should not be earning more money than they would have been if they were at work. And we've heard this from other groups as well. I don't know whether or not—you know, you're always taught in law school you never ask a question that you don't know the answer to, but I'm going to ask it anyway.

Are there any workers in your experience, in that you deal with workers' comp, who, if they were off on a workers' comp claim, would be receiving more money than they would have if they were working?

Mr Alan Turner: No, it's not our experience at all. Actually, a lot of our workers work at two different facilities and sometimes even more, so when they are injured at one facility, it cuts their income off from all facilities. It also creates a further problem in that it becomes somewhat difficult in determining, when you have not necessarily the same employer—because you do have change in the nursing home industry—if you don't have the same employer, it becomes difficult in getting actual earnings to submit for the injured worker to get what their entitled to. Employers tend to contest that in the nursing home industry.

Mr Davidson: If I may also augment his comment, as I indicated, our members earn on average \$25,000 gross; this is before taxes. The current maximum in WCB is well beyond that.

Ms Murdock: It's \$53,200, I think.

Mr Davidson: It's well beyond; it's twice that amount. So even at 90% of net, the workers that you were speaking about, where they would earn more on WCB if they were just earning WCB benefits only, they would have to be earning well over the \$53,000 which is the maximum in order to still go 90% from the board, on their benefits, and still be more than their earnings. To get 90% from the board—

Ms Murdock: To maximum.

Mr Davidson: —to maximum, to go over the maximum, I would say. Like, it's still a reduction for those workers.

Ms Murdock: So the board wouldn't be paying more than their maximum.

Mr Mahoney: Just to follow that a little bit further, I understand during the PLMAC discussions there was agreement, and I believe Gord Wilson—he'll correct me quickly if this isn't the case, but I'm pretty confident it is—agreed that for an injured worker on 90% of net for, let's say, a six-month period, and then working for six months, there were examples where people were being overcompensated because of their tax bracket. So it wasn't a matter of them earning more than they were earning when they were actively working; it was a matter that because of taxation and problems in calculations

there were examples of workers who were, at the end of the day, getting 105% or 110%.

Mr Wilson agreed, in a conversation that I had with him, that he does not support anyone profiting from workers' compensation. I think the issue is not so much, are there workers out there who are gouging the system and getting more than they were earning before, but if there are workers who—

Interjection.

Mr Mahoney: I think you had the floor a moment ago. Thank you.

If there are workers who are indeed being paid more than they were earning before, would you support some kind of a system—and I can't figure it out; it needs an actuarial calculation—that would flat-line it to ensure that at no time did any workers exceed 90% of their take-home pay?

Mr Turner: The act is currently set up to provide an income while somebody is off work or working on shorter hours or modified jobs if they have attained an injury at work. We support the changes in the bill that would ensure workers get an adequate income when they're off work injured or when they're forced to work less than regular hours.

Mr Mahoney: But there's nothing in the bill that addresses the problem that I've highlighted to you. If you deny that the problem exists, then I'd appreciate you saying so. There are some situations where, due to the taxation level of workers, they will receive in excess of 90%.

Mr Turner: Mr Mahoney, obviously you weren't listening to what was said. Most of our members earn around \$25,000; 90% of that is what the poverty level would be. So I doubt if any of our members are being plused-up or taking vacations in Hawaii. At least I would think not.

Mr Mahoney: Don't put words in my mouth. I made no such suggestion. I asked you a generic question. If a worker is in fact getting more than 90% of their net pay, would you support the position of Mr Gord Wilson and the Ontario Federation of Labour that a system should be devised to cap it at 90% of their net pay, no more, no less?

Mr Turner: I would support a system that pays injured workers adequately.

Mr Mahoney: The comment that you make about "Workers who become ill or injured are...vulnerable groups" etc, your conclusion, and you say that—of course I quite agree—"There will always be too many workers on compensation; one is too many. However, if that is the attitude, the cause of the problem must be sought and the injured workers must not be penalized."

The \$200-a-month supplement: There are two issues. There's the justice of the \$200 a month; there's the funding of the \$200 a month. Do you support de-indexing injured workers' pensions in order to redistribute the money to other injured workers?

No answer?

Mr Davidson: No.

Mr Mahoney: No, you don't support it?

The Vice-Chair: Thank you very much.

Mr Davidson: No, we don't.

Mr Mahoney: Pardon? I didn't hear the answer, I'm sorry.

The Vice-Chair: He said no.

Mr Mahoney: You don't support it? So then the next question is—

The Vice-Chair: Thank you, Mr Mahoney. Mr Johnson.

Mr David Johnson: I appreciate your deputation as well. I must check into this business about receiving 105% a little more deeply. My suspicion is—and it has to do with tax brackets—that it's people at a higher tax level than the members whom you're talking about in your organization.

But at any rate, you mentioned re-employment. I found a few interesting comments that you made. Representing hospital employees and employees from homes for the aged recalls to me a conversation I had on the weekend with the head of a hospital. Of course, those associated with hospitals feel that they're underfunded by this particular government, have a very restricted budget and, far from having opportunities to re-employ injured workers, are in the process of downsizing in many hospitals at the present time.

Secondly, having been involved with the Metropolitan Toronto government, I know that in the homes for the aged—again a very tight budget—the money has to either come from the provincial government or the municipal, which is the provincial taxpayer or the municipal taxpayer. I can tell you that neither taxpayer wants to pay more money. As a matter of fact, from my experience at the municipal level, people, certainly here in Metropolitan Toronto, think they pay way too much in taxes already.

A couple of years ago, my recollection is that the provincial government actually reneged on the funding level for homes for the aged and put some sort of a cap on it, so that the Metropolitan Toronto government actually didn't get the amount of provincial funding that was due to it. I think that's been rectified now, but that was a problem back there.

1730

So I just wonder, since you're being told, and I think rightfully so, that there are fixed budgets, either in hospitals or homes for the aged, and as a result you're being told that it's difficult to re-employ injured workers because there just isn't money for it—it's a very difficult situation all the way around. I wonder what sort of solution you might have. What would you recommend would answer these problems?

Mr Davidson: In regard to the re-employment issue, as we all know, the current system of funding nursing homes, retirement homes, homes for the aged, charitable homes and municipal homes for the aged, they are funded on a system of—which is called a case-mix index system. There are various envelopes which the home is funded under. When the home speaks to the union representative or the Workers' Compensation Board on its ability to re-

employ, they're speaking only with regard to the nursing and personal care envelope. They never speak of the accommodation portion, which is a separate envelope.

I'm not an expert on this particular issue, but as I understand it, that's the portion where we call the hotel portion of their funding, where they are paid for the actual accommodations that they provide. There is an ability for some funds, dollars, within that envelope which aren't earmarked for any particular purpose. If you are a nursing home operator in this particular province and you are compliant, meaning that your building is up to code, you have no mortgage, you are paid incentives through the accommodation portion.

The Vice-Chair: Thank you. That's it. On behalf of this committee, I'd like to thank the Service Employees International Union, Local 204, for their presentation, and if I may, I'd like to acknowledge the guidance and support that was given to me by Brother Turner in my early days when he was a rubber worker.

Mr Davidson: Thanks a lot.

MUNICIPAL WCB USERS GROUP

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Vice-Chair: I'd like to call forward our next presenters, from the Municipal WCB Users Group. Good afternoon and welcome to the committee.

Mr Michael Zroback: My name is Michael Zroback. I'm the manager of corporate workers' compensation services for the Municipality of Metro Toronto. I'm speaking here on behalf of the Municipal WCB Users Group as well as the Association of Municipalities of Ontario.

Mr Eric Gam: I'm Eric Gam. I am here on behalf of AMO, the Association of Municipalities of Ontario. I'm vice-chair of its fiscal and labour policy committee and I'm representing the chair of that committee, Michael Power, mayor of the town of Geraldton, who is also a member of the executive of AMO. This presentation was endorsed by the full AMO board at its meeting August 21.

Mr Zroback: The Municipal WCB Users Group, because it's not a very high-profile group, I would like to just spend a few minutes talking about. We are the WCB managers and coordinators in the municipalities. We have about 65 members. Our purpose is professional development as well as responding to various initiatives from the Workers' Compensation Board, whether it's on policy or from the government on matters of legislation such as this. We have made numerous presentations in the past and we're going at it one more time.

We have an overall message regarding Bill 165 and it's one you've likely heard before, but I feel a real need to reiterate it. Workers' compensation in Ontario is in big trouble and it does need to be changed very quickly and appropriately, in the appropriate manner. The right things need to be changed in the right directions. Just going willy-nilly and changing things is not going to be the answer.

There are a number of symptoms that compensation is in trouble here. We have the highest cost per lost-time claim of any jurisdiction in Canada, we have the longest

duration on benefit, and we have the second-highest average rate of assessment, and that is despite a decreasing accident frequency. As you can see, the axiom of accident frequency and costs are not linked any more. We have the second-lowest level of funding of any jurisdiction in the country.

The board currently assesses employers and compensates workers on the highest maximum earnings of any jurisdiction in Canada. They have an unfunded liability of thereabouts of \$11.6 billion, and it is increasing at an alarming rate, and that is very frightening to the smaller, schedule 1 municipalities in this province.

We see a lack of accountability and responsibility at all levels of the board, we have experienced political interference which has led to a very poor administration in the board, and as the last discussion showed, we see that the 90%-of-net-pay formula has led to overcompensation in some instances as a result of the tax structure, and in our view, clearly Bill 165 does not address these concerns.

We also have some concerns directly about the proposed legislation. We see a purpose clause that does not address the financial accountability or the security of the workers' compensation system. We see that there is no financial responsibility framework for decision-making and operating of the system. We see that the purpose clause in Bill 165 does not enable the government to be the final organization accountable for the system.

We see Bill 165 introduces unprecedented and, in our view, unsupportable new direct intervention powers for the government for one year after proclamation of Bill 165. The Minister of Labour will be calling the shots for a year.

We see that Bill 165 significantly alters the currently successful experience rating programs by emphasizing process rather than results. Programs are working fine, yet Bill 165 would seek to change these.

We see that the powers of the workers' compensation in the areas of vocational rehabilitation and reinstatement are being increased, and in choosing the penalty approach, in our view this unnecessarily clubs employers into toeing the line and this will almost surely lead to a lot more disputes with the Workers' Compensation Board and in our view is not consistent with service excellence.

The workers' compensation will have the authority on its own initiative to determine whether or not the employer has breached the re-employment obligation, regardless of whether or not there is a worker complaint. It is no longer a complaint-driven system.

We see that the exceptions to the Friedland formula and that the pension increases will increase the unfunded liability. Bill 165 is not dealing effectively with the unfunded liability, and it is a very, very serious matter.

We have some recommendations along these lines. When it comes to the purpose clause, we would recommend that the PLMAC clause be used. It was an excellent purpose clause. We would suggest that this be used instead of the Bill 165 purpose clause.

When it comes to the Minister of Labour's powers to direct WCB policy, like most other employers we would urge you to withdraw that section. We see no need for it.

When it comes to experience rating programs, we would urge you to continue with the current ones and withdraw the proposals for implementing new ones. The current ones are working very well, by anybody's reckoning. If it isn't broken, we don't need to fix it.

When it comes to vocational rehabilitation or re-employment, again we would urge you to withdraw the penalty approach. In its place we would ask that you propose incentives. When you reward people or reinforce people for doing what you would like them to do, chances are they will do it. It is in their interest to do it.

We've come to the unfunded liability. We would ask that there be no exceptions to the Friedland formula. We would also urge you to carefully reconsider the worker entitlement to the pension increases. I don't say in all cases they're ineligible, but again I would urge that the entitlement be very carefully reconsidered.

When it comes to a written submission, we are supporting the M.C. Warren and Associates Inc submission that you people have heard before. That would conclude the verbal portion of our presentation. Thank you very much for your attention.

1740

Mr Mahoney: Thank you very much. Once again I would have to say that we finally see some common sense and it's got to come out of the municipal sector. As a former director at AMO I'm not surprised at that, because when you deal with the grassroots you get to understand the problem.

You're not the big business that some of the government members like to take on at these hearings; rather, coming from a lot of experience. In fact, when I conducted my outreach tour, there were two places where we had extremely positive meetings on WCB reform; one of them was Ottawa, when we met with the people from the city of Ottawa, and the other was the city of Winnipeg. They have excellent return-to-work programs, they understand prevention and they put a lot of effort into that.

I'm afraid your call for incentives, however, will be falling on deaf ears. They would rather implement a system that had WCB police rather than incentives and rewards to reduce the number of accidents.

My first question to you would be: How would you feel about it, the possibility—and if you complain too loudly, it might happen to you—that this government might decide all schedule 2 municipalities should be moved into schedule 1?

Mr Zroback: That is our version of hell, quite frankly. We with every fibre of our being would resist that. We do not want to see that happen. When that was under active consideration we went to man the barricades and did battle as best we could. That would not be in our interest at all.

Mr Mahoney: Are you aware of the letter—I've referred to it on numerous occasions, but I think it's so vitally important—you referred to the PLMAC process and the purpose clause, which I have here which includes the FRF, the financial program, financial accountability. This is a letter on the letterhead of none other than the

Premier of Ontario dated April 21 to Jim Yarrow, chairman of the Employers Council on Workers' Compensation, and he says in there, and I quote, Bob Rae says, "A 'purpose clause' will be added to the Workers' Compensation Act which will ensure that the WCB provides its services in a context of financial responsibility."

That was the agreement that was entered into at the PLMAC; the Premier has acknowledged that in this letter, he's put it out. He's either been bullied by somebody in his government or he was lying to Jim in the first place. I don't know which. I would like to think he was not lying, but this information in black and white is very, very clear, that the Premier supported the exact position that you and others have articulated in establishing a purpose clause with financial accountability. Do you have any comments on that?

Mr Zroback: It's very unfortunate that it didn't come out in Bill 165 as that and we regret that tremendously. I agree with you; I would like to think that he was telling the truth when he wrote that, and I am at a loss to explain it.

Mr Mahoney: Maybe we should send him a letter and ask him if he was telling the truth when he wrote that.

Mr David Johnson: I appreciate your deputation. It brings me back to old times as the mayor of East York and going through the budgets on an annual basis and watching the payments for WCB going up and up and up. It seemed in many years that the increases were huge, and sort of pulling out my hair because of course the taxpayers demand, as you people know, the lowest possible rate that you can get and the municipal taxes in Metropolitan Toronto right now are under severe fire. Every component of the budget had to be looked at and WCB is an important component, and anything that would raise that is a real problem.

You mentioned the unfunded liability and severe concern with the unfunded liability, and I agree with you. But we've had other deputations today and through the past couple of weeks who've referred to it as the "phantom unfunded liability" and said it's a little bit of a mortgage that we shouldn't be concerned about on our house and we shouldn't be concerned about that; we should be more concerned with increasing benefits and paying out more. I wonder what your reaction is to that sort of—

Mr Gam: I've heard the same comment used with regard to the national debt or the provincial debt. Ultimately, the piper has to be paid.

Mr Zroback: Like any other responsible citizen, I'm very concerned about my mortgage and I'm very concerned about the unfunded liability. It's phantom until, like Eric says, the piper has to be paid. All of a sudden it's very real and I think we would be irresponsible not to address that in a much more responsible manner than we're doing in the Bill 165.

Mr David Johnson: I guess the question is, who is going to have to pay the piper? It's quite possibly the taxpayers who may have to dredge up the difference.

Mr Zroback: That's our concern, yes, indeed, exactly. The province's debt rating has already been downgraded, probably as a result of that.

Mr David Johnson: It's a contribution, I'm sure.

Mr Zroback: Yes.

Mr David Johnson: You also mention the experience rating and the fact that the current system emphasizes results and if you give an incentive to employers and it's in their financial wellbeing to get good results, then they'll go after that, and I think we've seen that in many industries.

The new system that they're proposing through this bill is to emphasize process, as you've indicated, rather than those results and I wonder if you could in the few seconds I've got left indicate what sort of impact you see that that new system will have on the employers in the province of Ontario.

Mr Zroback: Well, for the municipalities a number of our members and certainly a lot of the AMO members as well, and I emphasize the smaller ones, will have informal return-to-work programs, and they're working very well, but it's more on an informal basis. If we now emphasize process, this now has to be formalized. Someone has to be hired to formalize these, to run them and everything else, for no better results than we have right now. It's going to increase the expenses. It'll increase the bureaucracy to run this. It'll slow things down. I don't see it improving matters at all. I see it as a detriment.

Mr Paul Klopp (Huron): As a past councillor, I know about budgets. I got involved as a councillor when I think we really started to take issues seriously about who pays the bills. The unfunded liability, just for a couple of points quickly. The unfunded liability, national debt and provincial debt are really two different things altogether, and I just want you to understand that. I don't know what your background's in, but it's totally different.

Bill 162, in fact we just talked about the bureaucracy and the incentives to try to get people back to work. We're supposed to do that. Clearly, the last three and a half weeks and the past four years, as one who has watched this thing and been on a number of committees and we've held things up, we've slowed things up around there, we've moved things around, clearly this issue's been around a long time. I can remember it back in 1988 and 1989 when I was on council.

But are you stating now that the—because part of this is the Friedland formula, which workers—and it does slow the bleeding up, the unfunded liability up, and pretty well every workers' group has said they'll live with it. I gather you think that's okay too, but the Conservatives and Liberals have talked about actually further cutting benefits, and is that what you also want, benefits cut, from 90% and cut them even more down to 85% and 80%? Is that what you're also saying that we should do too?

Mr Zroback: I'm not saying in our submission that

we should do that. Were that to be done, that would be fine by us too, yes.

Mr Mahoney: On a point of order, Mr Chairman: I only wish that the government members would stop making absolutely false statements. The Liberals do not support reducing benefit entitlements.

The Vice-Chair: Thank you once again, Mr Mahoney. Mr Hope.

Mr Hope: My question would be, in listening to your opening comments, you talked about the high cost, benefit levels, premium rates, the unfunded liability. You talked about accountability and interference. You talked about the program working fine. You said about pension increase. In your recommendations you say, and I have a hard time understanding because you represent municipal, and I hear municipal elected people saying, "We want to be empowered more; we want to have control." For you to come out and say for a year through the transition period, the Minister of Labour, "Take away that power for him to have that ability," I have a hard time understanding where you're coming from when I'm hearing municipalities saying they want more power over top of programs, and yet we're trying to give the minister power for a transition period to occur. It's only for one year; it's not continuous.

You're talking about the experience rating program. You're talking about abandoning the penalties. In your proposals you talk about the problems for the worker and then you say, "We want more accountability." I thought a municipality would want more accountability to its own residents who live right in the community, who pay taxes, who are dependent on—we've heard presentations from people on WCB, on pensions, who have had to go to welfare. Maybe I'm wrong, but you're the director of community services department—I don't know if that's around the social services department—where you have expressed concerns around making sure that proper premium rates are being paid to the injured worker, making sure there's vocational rehabilitation, to enforce practices that make the employer more accountable than the system to the individual. I'm just having a hard time understanding. You're talking as if you're a business, yet you talk as if you're a community at the same time.

Mr Gam: I think our objectives are the same. We're saying that the mechanism proposed by this legislation does not achieve that objective in the ways that I think it could better do it, as per these recommendations.

Mr Hope: A \$200 increase per month is not going to help alleviate your situation, especially from social services? I have a hard time with that one.

The Vice-Chair: On behalf of this committee, I'd like to thank the Municipal WCB Users Group for bringing us their presentation this afternoon.

Our next presenter, Keith B. Cookson, not being here, this committee stands adjourned until 10 am tomorrow morning.

The committee adjourned at 1753.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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***Murdock, Sharon** (Sudbury ND)

Offer, Steven (Mississauga North/-Nord L)

Turnbull, David (York Mills PC)

Wood, Len (Cochrane North/-Nord ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Arnott, Ted (Wellington PC) for Mr Turnbull

Hope, Randy R. (Chatham-Kent ND) for Mr Wood

Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Offer

Johnson, David (Don Mills PC) for Mr Jordan

Rizzo, Tony (Oakwood ND) for Mr Huget

Clerk / Greffière: Manikel, Tannis

Clerk pro tem / Greffière par intérim: Grannum, Tonia

Staff / Personnel: Yeager, Lewis, research officer, Legislative Research Service

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**Legislative Assembly
of Ontario**

Third Session, 35th Parliament

**Assemblée législative
de l'Ontario**

Troisième session, 35^e législature

**Official Report
of Debates
(Hansard)**

Wednesday 7 September 1994

**Journal
des débats
(Hansard)**

Mercredi 7 septembre 1994

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Workers' Compensation and
Occupational Health and Safety
Amendment Act, 1994**

**Loi de 1994 modifiant la Loi
sur les accidents du travail et la Loi
sur la santé et la sécurité au travail**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Wednesday 7 September 1994

Mercredi 7 septembre 1994

*The committee met at 1009 in room 151.*WORKERS' COMPENSATION
AND OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL
ET LA LOI SUR LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

UNION OF INJURED WORKERS OF ONTARIO

The Vice-Chair (Mr Mike Cooper): I'd like to call forward our first presenters, from the Union of Injured Workers of Ontario. Good morning and welcome to the committee. Welcome to the people you've brought and the people who will also be in the other three rooms throughout the Legislature who will be joining us in our proceedings this morning. Could you please identify yourself for the record and then proceed.

Mr Phil Biggin: I'm Phil Biggin. I'm the executive director of the Union of Injured Workers. With me are Sokhom Srey, Baldev Dhaliwal and Anna Rizzetto. We will all be making part of the presentation.

We're very pleased to be here today but we are not pleased with the way we have been treated by either this committee or the government of Ontario. You know well the history of the Union of Injured Workers. You know well how workers have come and participated in the process that I believe made this province a better place to live. The way that this was done today is we asked for a large space to give a presentation and you have effectively tried to divide us up, and I think you have seen some of the anger of the injured workers who are here today.

I will now proceed with the presentation.

The Union of Injured Workers was founded in Toronto 20 years ago to organize the fight for a better deal for injured workers. Initially, four demands were put forward: job security or full compensation; annual automatic cost-of-living adjustments; no board doctors; improved safety in the workplace and increased penalties for unsafe employers.

Of all of these demands, only one was met, and that was after 11 years of struggle in which many members of this current government supported us and we obtained the right to regular cost-of-living adjustments in the legislation.

The Union of Injured Workers cannot support Bill 165 as it has been presented by the government. Our detailed position is set out in the UIW-TIWAG clause-by-clause analysis, which you have. The purpose of this brief and today's presentation is to focus on three main areas of concern: (1) the lack of injured worker representation on the board of directors of the WCB, (2) reduction of benefit levels through de-indexation, and (3) the \$200-a-month increase to old-act pensions.

Mr Sokhom Srey: The lack of injured worker representation: This law reform process has been flawed from the very beginning because of the failure to include injured workers. Workers' compensation reform is too far-reaching and too important to be left to bargaining between representatives of big business and organized labour. The failure to include injured workers on the Premier's Labour-Management Advisory Committee was a mistake and an insult to injured workers of Ontario.

It is injured workers who have firsthand knowledge of the areas most in need of reform. It is injured workers who are best equipped to assess the impact of any proposed reform on injured workers. As the different responses to this bill demonstrate, injured workers do not necessarily have the same interests or positions as organized labour. Injured workers must be formally included in any discussion about changes to the system. Bill 165 proposes to entrench a narrow concept of a bipartite system on the board of directors of the WCB. Injured workers could only participate at the grace of the business and labour leaders if they could agree to give injured workers a "community" seat on the board. This is simply not good enough. The formal exclusion of injured workers as a group represented on the board of directors will perpetuate the injustice created by the Premier's Labour-Management Advisory Committee. It would inevitably result in further decision-making that is unacceptable to those whom the system is supposed to serve: injured workers of Ontario.

The position of the Union of Injured Workers is that bipartism does not mean that decision-making is left up to business and organized labour. Injured worker organizations represent injured workers as do trade unions. Injured workers should be formally represented on the board of directors and not have to go begging for the approval of business and labour appointees.

Mr Baldev Dhaliwal: Ladies and gentlemen, benefit reduction by de-indexing: I'd like to start you off with a question. Where were you in 1985? The Union of Injured Workers was right here in Queen's Park. After 11 years of struggle, all parties finally saw the light: Automatic

protection against inflation was necessary. The principle behind inflation protection is not a matter of partisan politics. It is simple justice that is reflected in the speeches of all parties about Bill 81.

The principle of automatic protection against inflation is no less just or fair today than when it became law nine years ago. What has changed is the motivation of the people who are playing with the lives of the injured workers.

We urge this committee not to abandon the principles of justice and fairness that stood behind full automatic protection against inflation in Bill 81. The failure to protect long-term workers' compensation benefits against erosion by inflation is a real reduction of benefits. The Union of Injured Workers will never support any legislation that reduces the benefits of injured workers.

The 4% cap on increases is a problem. A cap on inflation protection for injured workers is pure dirty power politics. When times get tough, cut the members of society who are least able to fight for themselves, the injured workers. The cap on inflation protection will hurt those who need help the most. The Union of Injured Workers has opposed this for its 20-year history and will continue to oppose this injustice.

The Friedland formula only partially indexes benefits and will significantly hurt injured workers regardless of whether benefits are capped or not. For example, after 20 years at an inflation rate of 2%, an injured worker who has been awarded a \$400-a-month pension would need \$596 a month to simply receive the same benefits as originally awarded. Under the Friedland formula, that injured worker will only be receiving \$442 a month. This represents a real reduction in compensation benefits of 26%. At the lowest imaginable rate of inflation, injured workers will still lose more than one quarter of the compensation benefits to which they are entitled. The Union of Injured Workers will never accept a reduction in benefit levels for injured workers.

The effect on future economic loss awards is even more drastic. Probably no member of this committee could even demonstrate how the FEL awards are calculated and what happens during the reviews with the change in deemed wages, the adjustments to the pre-injury earnings basis, the 10% margin for no changes. Yet the Friedland formula is going to impact on these calculations so dramatically that by the time of the second review, many injured workers will find their monthly FEL cheques cut to a smaller amount, when their real loss of wages has actually increased. This committee must take the time to address the calculation of FEL benefits and to understand the impact of the Friedland formula. Injured workers' benefits will be reduced and the Union of Injured Workers cannot support this.

Mr Biggin: I'm going to speak now about the \$200 increase to old-act pensions.

Many injured workers are unemployed and living in poverty. The workers' compensation system has in fact failed them. It has failed to get them back to meaningful employment. It has failed to compensate them for what they have lost. Many injured workers with permanent disability pensions under the old system suffer additional-

ly because they were injured long ago when benefits were set artificially low because of low wage ceilings and kept low by the failure of the government to provide adjustments that kept pace with inflation. The Union of Injured Workers has fought for years to get the government to recognize the poverty of these injured workers and to increase their pensions.

The \$200-a-month proposal in Bill 165 does not solve the problems of these injured workers. First, this is not an increase to the pensions of these injured workers. It is an addition to the supplement section, section 147(4), and it is just another supplement. The WCB or government can take away this \$200 as easily as taking away the OAS. The \$200 is only payable to someone who is entitled to the old-age supplement. A couple of years ago, when the WCB began its first review of these supplements, it cut 9,000 injured workers off. It decided that the 9,000 injured workers who were once receiving the supplement were not entitled to it after all. If those workers had the additional \$200 proposed in Bill 165, they would lose this as well.

Every single pensioner with a section 147(4) supplement is coming up for another review. According to the government, there are 36,000 of them. We expect this review will be no different than the last, and we may see another 9,000 or even more cut off. Those injured workers will lose their entitlement to \$200 as well.

The intention of the \$200 increase was to provide some measure of economic security. This will not happen as long as it is tied to a supplement that the board can take away. Increases must be put on the pension under sections 43 or 45 of the old Workers' Compensation Act that continues to apply to the claims of the older workers. Attaching the increase to the supplement will guarantee that many injured workers will not receive their entitlement.

The WCB does not pay the supplement to everybody who is entitled, after all. Every day injured workers come to our office who should be on supplement since 1989, but they've never heard about it and they've never received any forms from the WCB. Every day we see injured workers who got turned down for the wrong reasons, but they never appealed. We see injured workers who were cut off in the last review and gave up in despair. Linking an increase to the supplement will only magnify the injustice created by the arbitrary decision-making and cash register mentality of the Workers' Compensation Board.

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Over the past several months we have conducted surveys of injured workers attending our public meetings. Some of you here have been present at those public meetings and have seen the great interest that injured workers have in reforming the workers' compensation system. Surveys of hundreds of injured workers at several different meetings have shown that approximately one half of the old-act injured workers who never returned to work after their accident never received a supplement.

This is consistent with the information that was given to us in a board study in 1980 that said approximately 40% of permanently disabled workers receiving pensions

never returned to work. Our flesh-and-blood statistics have borne this out.

When the Premier announced these increases in the House in April, he promised that he would ensure that it would go to benefit those injured workers who were also on welfare and that there would be no social assistance clawback. Yet we have not heard anything about this assurance since the bill was introduced. The Minister of Community and Social Services has informed us in the course of our meetings that there are over 7,000 injured workers with permanent disability pensions who are now surviving on social assistance in addition to WCB benefits. If nothing is done to stop the clawback, they will just see their social assistance benefits reduced by a corresponding amount. Under the current social assistance regulations, the increase will be no benefit at all to a substantial number of the promised 40,000 beneficiaries.

And yet there is another group who could never get the supplement because, by no fault of their own, they turned 65 before it was introduced in 1989. You'll remember that Bill 162 produced subsection 147(4). You've heard from several of them at these hearings. It's rather ironic, I believe, that the poorest of the injured workers will not be entitled to the increase which is meant to relieve the poverty of injured workers. These are the very workers who built the roads, the skyscrapers, the subways and the pipelines of this province for \$1 an hour or less. Now they are trying to stay alive on pensions which are based on their low wages when cost of living has left them far behind and in poverty.

When we were talking to the government prior to the establishment of the legislation, we wanted a system established which would take into effect all of these people, particularly the injured workers injured prior to any form of indexation in 1975. Those workers are suffering. Even a worker with a 100% pension prior to 1975 has a very, very small pension, and these people also are excluded from receiving the \$200. This is a real insult and injustice to injured workers who most deserve an adjustment to their pension.

The Union of Injured Workers urges this committee to correct this mistake. Don't tie the increase to the supplement. Put the increase where it should be: directly tied to the pension through sections 43 or 45 of the old act. This would clarify all of the confusion. There's no point in kidding ourselves. As long as it's tied to subsection 147(4)—yes, this can be used as a reference, but the way it's tied in this legislation, it is going to penalize many, many injured workers who are suffering and who have very, very small pensions. This I do not believe was the intention of the government when the legislation was proposed.

For many years we've been fighting for justice for injured workers. You can move in this direction by ensuring that all old-act injured workers with permanent pensions and who have not returned to work or who are underemployed get a \$200 increase. This can be done by putting the increase on the pension and not on the supplement.

Anna Rizzetto will just speak briefly about her situation. This kind of encapsulates exactly where things are

at with the \$200 increase with respect to the older injured worker.

Mrs Anna Rizzetto: I was injured in 1968 when I was working for 60 cents an hour. I could not stay on that job because it was too heavy. In 1969 I find a job at Philco-Ford. Since it was a union plant, I started at \$1.96. When finally I had to stop working because I couldn't stand up, and I had another operation, my wage was \$9.12 an hour, but my permanent pension was set at the 1968 level finally. After many battles, I was awarded a 55% pension, but because my basic earnings in 1968 were so low, I cannot receive the supplement. After this law is passed, I will not get the \$200-a-month increase. This is not fair.

Mr Biggin: So you see, this situation repeats itself time and time again, and many people have come before you and presented their cases. This is not an exception; it's quite a number of injured workers. Certainly, as our statistics have shown, supporting the statistics presented by the WCB, close to 50% of injured workers with permanent disability pensions are unemployed, in other words, have never returned to work or returned to work and couldn't continue working. So we're talking about 36,000 people for the \$200 increase. That's certainly not close to the number of 180,000 permanently disabled workers; 50% of 180,000 is not 35,000. So a lot of people are going to be gypped out of this unless we redirect and rewrite the legislation to put the supplement directly on the pension, section 43 or 45.

The question of indexing: I don't think you would ever expect the Union of Injured Workers to come before you after we fought so many years, demonstrating outside year after year to get the year-by-year increase in the cost of living and then finally achieving it in 1985, Bill 81, and now you're asking us to roll this back and take away from injured workers what everybody—Mr Gillies from the Conservative Party; Mr Wrye, who was the Labour minister at that time; Bob Rae; Floyd Laughren—said was a victory for injured workers which would never be taken back. Do people in the Legislature have no honour, that they would come before us and expect us to accept a package in which there is de-indexation? The Union of Injured Workers cannot accept this.

There's much more to be said about Bill 165, and there are some very, very positive aspects to it and some negative aspects. More will be discussed in the presentation by Injured Workers Consultants later today and by the Industrial Accident Victims Group of Ontario tomorrow. A more detailed analysis can be found in the UIW-TIWAG clause-by-clause brief, which accompanies this brief and you all have before you.

Let me just remind the employers of Ontario—because really this is why we are here today, because the employers are setting about on a campaign of hysteria around the unfunded liability. I'm not saying there aren't financial problems at the compensation board, but any insurance plan has an unfunded liability; it is an actuarial projection. This is something that should not be used against the injured workers to take away the benefits that have been fought for, year by year. These are flesh-and-blood members of our society who have shed their blood

and have built the Ontario that we enjoy today. Some of them may be in your own families.

So examine your consciences and consider the fact that this legislation should be addressed in terms of providing the increase that has been promised to the old-act injured workers for so long. Then we have the royal commission, where we can go on to other things. But do not couple that increase that you give some of the older injured workers with the de-indexation which is going to hit many of the old-act injured workers and all of the injured workers who were injured after 1990. I don't want to come to the situation at the end of 1994 and say, "We're going backwards rather than forwards." Let's be positive: Increase and improve the legislation, improve the funding basis for it, make the system work and also address the tremendous problems that we have at the Workers' Compensation Board, which many people addressed and I'm not going to talk about, but every one of you knows the delays and the suffering and the suicides. It's a disgrace.

I can't believe that in the wealthiest province in Canada we cannot come up with a solution which would benefit all of the members of society. We want the employers to stay in Ontario. We want them to be viable. We want to have a healthy environment. We want to have a healthy economy. We want people to stay here, but we want people to have some kind of social protection that does not force them below the poverty line, and that's what we see with workers' compensation today. For God's sake, try to make it right.

1030

The Vice-Chair: Our time's up, so a quick comment from each of the caucuses.

Mr Steven W. Mahoney (Mississauga West): Thank you for your presentation. Since I don't have time for a question and answer, perhaps I'll just put on the record, for your thoughts and anyone else who cares to think about it, that the entire structure of Bill 165—we've heard from managers who say they are totally opposed and want the bill withdrawn. We've heard from injured workers in London, Sault Ste Marie, Ottawa and here in Toronto who are unhappy for different reasons, but they want the bill withdrawn.

I guess my question would be, considering that we have a process coming up under a royal commission, presumably beginning this fall, would it make sense to have this committee recommend tabling of this legislation and refer it to the royal commission as one aspect that the royal commission should look into, rather than passing this bill, then going to a royal commission and having to uproot the tree and take a look at the whole system again? What do you think?

Mr Biggin: No, that's not what we're talking about. It would be rather dangerous and reckless to table the bill and ask these people—the statistics show, and why people want to give the \$200 increase is because people are dying off day by day. Address the issue of the older workers. In fact, table the de-indexing and leave that to the royal commission. But we're not asking to sabotage the increase for the older workers.

Mrs Elizabeth Witmer (Waterloo North): I just want to note that I don't have that clause-by-clause brief which is supposed to accompany this and neither does Mr Arnott.

Thank you very much for your presentation. Your presentation focuses exclusively on membership on the board and financial compensation. Are you not concerned as well with the service delivery and rehabilitation?

Mr Biggin: Yes, I said that, but I thought that would be better left to another forum. We've been over this many times, the question of service delivery, and we run into it every day. We have 30 to 40 people through our office every day. They're suffering, and they're suffering really badly, as you well know; all of you have your own offices. I'd like to see that fixed up.

Mrs Witmer: This bill doesn't address that at all.

Mr Biggin: No, and that has to be addressed. That is why, my friends, it's very important that injured workers be represented on the board of directors, because we are the major stakeholder group and we should be there, representatives of our organizations, particularly the provincial organization, the Ontario Network of Injured Workers Groups.

Ms Sharon Murdock (Sudbury): Good to see you again, Phil. You are right that the intent of subsection 147(4) was to be used as criteria to determine the \$200 supplement, so we will look at that.

I just wanted to clarify for you, on page 6, that it has been discussed and brought to our attention about the clawback, and until something regarding that is passed—it's regulatory, so it's not in the legislation—we have guarantees from the Minister of Community and Social Services that the regulation will be ready to go when the \$200 section is passed. So just for your edification, it will be there.

Mr Biggin: I think it's important to make that publicly known, because people are very worried about it, and rightfully so.

Ms Murdock: It was raised in the Sault, and I stated it there.

The Vice-Chair: Thank you. Just at the beginning of your brief, where you mentioned about the accommodation, I'd like to remind you that we did try and accommodate you by having extra rooms in here, and also, in fairness to all the other injured workers across the province and the public, this is the room that is televised, so it was being brought to other people who couldn't make it here today. So we did try to accommodate you.

But on behalf of this committee, I'd like to thank the Union of Injured Workers of Ontario for bringing us their presentation this morning.

Mrs Witmer: The day that the hearings began I had asked for copies of the discussion papers dealing with the activities of the transition team. Now, I have not received those papers as of yet, and I just wondered if someone could tell me when I'm going to be receiving those discussion papers.

The Vice-Chair: I don't believe there's anybody from the ministry here in the room at the moment.

Mrs Witmer: There have been three circulated: return to work, governance and financial targets. I'm wondering what the holdup is. I asked Mr Thomas, the former Deputy Minister of Labour, for those papers. Those papers had not been signed off by the business community, so I was quite anxious to get copies of those discussion papers from the transition team.

The Vice-Chair: The clerk will check with the ministry and see if we can get the answer. Ms Murdock.

Ms Murdock: I believe that the ministry is trying to answer the questions as we go. In the second batch that came from the ministry, I think the letter would have been signed by Marg Rappolt or Mitch Toker in that package. It should be included.

Mrs Witmer: All of those?

Ms Murdock: The transition team information and the proposal.

The Vice-Chair: The package that we've already received from the ministry?

Ms Murdock: Yes.

Mrs Witmer: When did you get that? I don't have that.

Ms Murdock: Whenever she puts it on our desk.

The Vice-Chair: There was something handed out to the committee members, and if not, then it would have been mailed to your office. The clerk will check on that. Okay?

1040

CANADIAN PETROLEUM PRODUCTS INSTITUTE, ONTARIO DIVISION

The Vice-Chair: I'd like to call forward our next presenters, from the Canadian Petroleum Products Institute. Sorry about the delay. Welcome to the committee.

Ms Gail Bolubash: Thank you.

The Vice-Chair: Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd leave a little time for questions and comments. Could you please identify yourself for the record and then proceed?

Ms Bolubash: We're representing the Canadian Petroleum Products Institute. The Canadian Petroleum Products Institute, or CPPI, would like to thank the standing committee on resources development for the opportunity to present our views on Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act. Our presentation will be made by myself, Gail Bolubash of CPPI; Cathy McCann, who is with Petro-Canada and a member of the CPPI-WCB task force; and Rosa Fiorentino, who is with Imperial Oil and chair of the CPPI-WCB task force.

The Canadian Petroleum Products Institute is a non-profit association representing Canadian companies involved in the refining, marketing and transportation of petroleum products. The mission of CPPI is to proactively serve and represent these sectors of the industry on environmental, health, safety and business issues affecting the industry and Canadian society.

The institute has a national office in Ottawa and four regional offices located in Dartmouth, Montreal, Toronto

and Calgary. The work of the institute is supported by an extensive network of committees and task forces made up of industry representatives.

The industry generates approximately \$24 billion in annual revenues and directly employs 100,000 Canadians and indirectly employs 200,000 in supporting industries.

CPPI, Ontario division, represents seven refineries, over 300 bulk plants and terminals and over 4,000 service stations.

CPPI has been supporting the business caucus of the Premier's Labour-Management Advisory Committee through participation in the working groups in the development of the employer proposals for workers' compensation reform. We are, however, very disappointed that the government has ignored the accord reached by business and labour and has introduced a bill that is not fiscally responsible.

CPPI endorses the submission of the business steering committee which was presented to the standing committee on August 23, 1994, and does not support Bill 165.

In conjunction with the proposed amendments under Bill 165, we will now address the following issues of significant concern to CPPI. Cathy.

Ms Cathy McCann: The purpose clause: The purpose clause, through Bill 165, does not include financial responsibility as a purpose of the act. This exclusion will only serve to broaden entitlement and increase the unfunded liability, which currently stands at \$11.7 billion.

Currently, our industry pays one of the lowest assessment rates in Ontario, which is directly attributed to our good safety performance. Putting this rate in perspective, it is still double the industry rate in other jurisdictions and thus affects our competitiveness across Canada. A large percent of the makeup of our rate is the unfunded liability. Without the unfunded liability in Ontario, the average assessment rate would be approximately 25% lower. The UFL has also been identified as a factor which contributed to the lowering of Ontario's credit rating. We must address this crisis today. Future employers must not be unduly burdened, and injured workers must not have their benefits jeopardized.

The business representatives of the PLMAC presented to the Premier a financial responsibility framework which would have balanced the workers' compensation system between fair compensation for an injured worker and financial responsibility and accountability within the system.

The government claims that financial responsibility is addressed in section 12 of the bill, which states that, "The board of directors shall act in a financially responsible and accountable manner in exercising its powers and performing its duties," and in subsection 15(3.2) of the bill, which states that, "The board shall evaluate the consequences of any proposed change in benefits, services, programs and policies to ensure that the purposes of this act are achieved."

However, as written, these sections of the bill apply only to the board of directors and do not require the WCB administration or the government to exercise financial responsibility when evaluating any proposed

changes to benefits, services, programs and policies. Therefore, financial responsibility must be included in the purpose of the act to ensure a more competitive and sustainable workers' compensation system in Ontario.

Experience rating: Section 28 of Bill 165 proposes major changes to the current experience rating programs, the new experimental experience rating program, NEER, and the council amendment of draft #7, CAD-7. The proposed changes will alter the experience rating programs from measuring employers' performance based to results to measuring processes.

The current experience rating programs are proven catalysts in reducing the frequency and severity of workplace injuries and enhancing the level of individual liability. They promote health and safety initiatives in the workplace.

The proposed changes, including the new amendments proposed by the government to the standing committee on August 22, 1994, will create an administrative nightmare for both the WCB and employers by complicating what has been a relatively simple and highly effective program. Why would anyone want to change one of the few successful programs at the WCB? Experience rating must remain in its current form.

Ms Rosa Fiorentino: Before we leave the experience rating area, I would like to help clarify some conflicting facts that were presented to this committee.

First, the accident frequency rate is measured relative to man-hours worked. Therefore, the rate takes into consideration any decrease or increase in the workforce. Second, employers are aware of the NEER off-balance and agree it should be addressed. Third, the WCB's own studies have demonstrated that the experience rating programs are meeting their objectives and that there is no evidence that the experience rating programs have contributed to the hiding of claims by employers.

Return to work: Bill 165 unnecessarily introduces new return-to-work and vocational rehabilitation obligations on employers. The current legislation already provides for re-employment obligations. This bill should concentrate on providing incentives for employees to return to work and resources necessary to assist employers in returning these workers to work, for example, some type of services or programs within the WCB to assist in developing effective return-to-work programs. Incentives and rewards will encourage positive behaviours, not penalties.

Policy direction: Section 16 of Bill 165 compromises independent administration, a founding principle upon which the workers' compensation system was built, which is one of empowering the minister to issue policy directions and not requiring the government to be financially accountable or responsible for such directions. The workers' compensation system must be allowed to function independent of any government intervention or interference.

In conclusion, the Canadian Petroleum Products Institute cannot support Bill 165 in its current form for the following reasons:

(1) The potential liability will increase with the implementation of Bill 165, which will further affect the com-

petitiveness of business, as well as put the security of injured workers' benefits at risk.

(2) It will not restore accountability or financial responsibility to the system.

(3) It will not encourage positive practices aimed at accident prevention, rehabilitation and re-employment of injured workers.

(4) It totally undermines the principle of an independent administration.

For these reasons, CPPI believes Bill 165 should be withdrawn and the proposals presented to the Premier by the business community last fall be implemented. The business proposals would ensure the viability of a workers' compensation system by securing benefits for injured workers and improving the competitiveness for business in a global marketplace.

Also, to help clarify some of the issues around compensation benefits, I have attached an article from an actuary which explains how an injured worker can receive over 100% of his or her pay while off work due to a work-related injury.

Mrs Witmer: Thank you very much for your very concise presentation. I think the more I hear from the presenters such as yourself, the more I become aware of the fact that this bill simply does not set out a clear vision for reform of the system. Instead of having a bill which responds to the modern workplace, where we're looking for cooperation and consultation between management and workers, we're seeing a bill here which is certainly more confrontational. It gives unions more power, but there's absolutely no attempt to deal with the improvement of service delivery.

1050

I want to take a look at the purpose clause here because you've pointed out, and I've heard this now for several weeks, that this does impact on the competitiveness of business in this province. That's one area the government doesn't seem to be terribly concerned, because we heard from some of the other presenters, and maybe you could respond as well, when they are looking now to expand investment opportunities, they're not going to stay in Ontario. They're going to have to take a look at where the rate is more competitive. Is this something that will impact on your industry as well?

Ms Fiorentino: Yes, it definitely will. As we state in our presentation, right now almost 30% of the assessment rates in Ontario is made up because of the unfunded liability. Our petroleum industry is affected because in other jurisdictions, for the same industry, the same type of work, it's approximately 50% lower than what we're paying here, even though we are paying one of the lowest rates.

In Ontario, there's definitely something wrong. The average claim here in Ontario is \$26,000, versus \$12,000 in other jurisdictions. There has to be a problem with the system and it has to be looked at in its entirety.

Mrs Witmer: Of course, the experience rating is the one program that's been very effective, and now the government's going to tamper with it. Really, instead of augmentation and providing more incentives, we're going

to see a subjective audit and some other factors enter into it. What's that going to do to your industry?

Ms Fiorentino: The industry right now is very concerned with the NEER program and the way it will be changed under Bill 165. Right now, it's the only way that ensures us that we get rebates according to our results. We've got a very, very low accident claim record for industry. We always have had, even prior to the NEER program, so it's only fair that we get some of the rebate which demonstrates the definite results of our low frequency rate of accidents.

Mr Ted Arnott (Wellington): You went through the Premier's Labour-Management Advisory Committee process.

Ms Fiorentino: Yes.

Mr Arnott: That's the process which supposedly allows both sides to come together in a partnership arrangement; at least, that's what the government tells us. It didn't work in this case. What do we need to do to make that process work, or is there any way to make it work?

Ms Fiorentino: Right now the only way it's going to work is if we go back to the accord that was reached by both labour and management. It was an accord that was struck through heavy negotiation through all parts. Sure, there are areas that the labour groups were not totally happy with, there were areas where management wasn't, if you look at the individual areas of the accord. But if you look at it as packages of a whole, we definitely believe it was a balanced accord, and only if the entire accord is adopted will it be a balanced bill.

Ms Murdock: I just wanted to go back to the aside that you put in with regard to some of the concerns that have been raised. Just so you know, I don't think anybody in this room doesn't agree that any program that improves health and safety in the workplace and reduces accidents is good, and we've heard NEER referred to that. But then in the same paragraph you said you agree—or correct me if I'm wrong—that it contributes to the hiding of claims.

Ms Fiorentino: No. I said, "There is no evidence that the experience rating programs have contributed to the hiding of claims by employers."

Ms Murdock: Okay.

Ms Fiorentino: That study can be obtained either through the board or through the business steering committee, the business proposals that were handed to the Premier last fall. A copy of the study is included.

Ms Murdock: Yes. I'm sure that if we haven't seen them already, we will at some point.

The other thing, the offsetting on NEER: You and I both know that 1992 was \$25 million over the surcharges; last year it was over \$150 million over the surcharges. The reality is that this is contributing to the unfunded liability, which is a concern.

Ms Fiorentino: Yes.

Ms Murdock: So when you say that business agrees it must be addressed, do you have any ideas as to how it can be?

Ms Fiorentino: Yes. Basically, what the NEER system needs is a maintenance program. Right now we're probably the only province that has a merit rating program and doesn't have full-time people who are maintaining that program. So obviously, when there are any bills or legislation passed that makes any changes that affect the NEER program, it has to be more maintained.

Some in-depth analysis has to be done on the program. We know that one of the things contributing to the NEER off-balance is the FEL awards. Basically, that's all it needs. It's a good program. It should be kept in place, but all the board needs to do is contribute some resources to that area, which will definitely fix up the off-balance. Employers agree there should not be an off-balance to the NEER program.

Ms Murdock: So when you say the board should contribute to that, where does it get the money from?

Ms Fiorentino: Through the administration. I believe there are other areas. I cannot say right now, but I definitely realize that there are areas where resources can be shifted, where you don't need as many resources right now within the board, and I know that the strategy the board of directors has been working on does look at some of those areas.

Ms Murdock: In trying to save money to apply to the unfunded liability which exists.

Ms Fiorentino: Yes, but sometimes—

Ms Murdock: It's just a spiral that's non-ending.

Ms Fiorentino: No, you're quite right, but you have to look at the areas where the most impact can be made, and I think NEER is something that has to be looked at, as well as the FEL and NEL, and hopefully that can be addressed.

Ms Murdock: Do I still have any time?

The Vice-Chair: Yes.

Ms Murdock: I agree with you. For those employers that have been instituting health and safety practices—and there are a number, many—there are also, unfortunately, equally those that aren't. How do you address them, since Bill 162 made it voluntary and yet there are still many, many companies out there that are not instituting any kind of health and safety other than what they have to do, or minimally, and even then with people arguing for it? How do you address that?

Ms Fiorentino: I believe there are enough incentives, especially penalties, to employers that do address that through reinstatement obligations that are already present in the legislation through the experience rating programs. Maybe the employers you're talking about are the ones that haven't entered the experience rating programs yet, which I know will be extended to all employers next year.

Mr Mahoney: Thank you for your presentation. The example you give of the worker getting 111% of his net pay: Have you looked at how we could flat-line to make sure it's 90%, bearing in mind that I know these discussions took place at the PLMAC group? I believe Gord Wilson has said he does not support anyone profiting from an injury and would support some kind of system. If this James Clare can analyse this actuarially in the way

that he has done this, why can we not implement a system that ensures that a worker gets no more and no less than 90% of his or her net pay?

Ms Fiorentino: I honestly believe that we can do that. That has to be, again, addressed with the professionals, consulting actuaries, working with the board to try to put together a program that looks at the benefits received by workers from all sources to ensure that there is no disincentive for an employee to return to work.

Mr Mahoney: But on the other side of the disincentive coin is the issue of the suffering that we see here this morning, the suffering that we see in all of our hearings in my outreach across the province. At every one of the hearings we had absolutely legitimate concerns put forward. We've seen people being forced to live on \$300 a month out of a pension award and clearly unable to return to any kind of meaningful employment. It's not just this disincentive and it's not just this level of benefit. It's also the real, human issue. How do we ensure on both sides of it that a worker's not getting 111% of their net take-home pay but at the same time that they indeed are getting 90% of their net take-home pay?

Ms Fiorentino: First of all, I'd just like to address the fact that employers agree that there are cases that need to be addressed where injured workers are not receiving benefits at the levels they should be, and that was something in the accord as well that looked at addressing these types of issues.

This particular article addresses only the temporary total disabilities where workers are receiving 90% of net, and through the tax brackets, the way it works is they end up receiving much higher than that. This also excludes companies that are topping up in labour agreements where employers have to top up to 100%. That drives it up to about 120% now; you're looking at 120% of your pay.

The Acting Chair (Mr Paul Klopp): On that note, the committee thanks the Canadian Petroleum Products Institute for taking the time to come here today to put forth your views. I'm sure you'll be watching as we proceed.

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BUILDING TRADES WCB SERVICES

The Acting Chair: I now call the Building Trades WCB Services to come forward with their presentation. You have 20 minutes, and if you could make it shorter, we'd have time then for questions from the three caucuses. Get your name on Hansard, please, and it's your time.

Ms Julie Nielsen: My name is Julie Nielsen and I am with the Building Trades WCB Services. These services actually are a project of the Toronto-Central Ontario Building and Construction Trades Council. Nine construction locals, whose jurisdictions cover not only the greater Metropolitan Toronto area but the province, are participating in this project. This service represents over 7,000 workers.

No matter where these workers live in this province, one thing common to all construction workers is that the present system does not work for them. With Bill 165,

these workers will be even more disadvantaged.

The government is to be commended for initiating reform of the compensation system. All sectors within our economy have been affected by the recession and recent trade agreements. Other provinces have reported increased employment, but workers in Ontario have not felt that same upswing. Construction in Ontario is at an all-time low and accidents continue to happen. The accident frequency rate is lower due to the high unemployment within this sector, given the economic times.

Construction sector employers are demanding more from their workers today. As a result, workers are continuing to experience serious compensable injuries. Back injuries, which constitute over 60% of all claims, are a major problem for both the worker and the board. Repetitive strain injuries are disabling construction workers at an increasing rate.

The areas addressed in Bill 165 demonstrated to construction unions that their input was lacking when the Premier's Labour-Management Advisory Committee met to look at reforming the compensation system. It is inexcusable that representation from construction unions was not requested. Employers within the construction industry were asked to submit their concerns and recommendations, but those who perform the actual everyday labour for those employers did not receive equal treatment.

Local 183 of the Labourers' International Union has recommended the establishment of a bipartite committee composed of members of the construction industry to address the specific and unique needs of the industry. We support this recommendation because our concerns are not only with Bill 165 but with the present compensation system, which is not meeting the needs of construction workers across this province.

Any advocate representing injured construction workers knows the difficulties that are faced on a daily basis simply to have a workplace injury recognized. Construction workers perform a unique job. Their bodies are the main tool of their trade. The board recognized this and created a separate unit for construction, ISU 4.

Construction is fundamentally different from other sectors in that the industry is subject to seasonal and cyclical fluctuations and that workers within the industry require mobility and flexibility to move from one work site to another. Their work is specialized and strenuous.

With few exceptions, the adjudicators, managers and medical personnel at the board could benefit from sector-specific training that would provide them with an understanding of the work processes involved in the construction sector. The Toronto building trades council is interested in providing some of this training. Presently, claims for injuries that are a result of a work process are denied on the basis that they are not compatible with the job description.

Let me give you some examples. A wallpaper hanger performs his trade for many years. He now suffers from bilateral tendonitis of the shoulders. Tendonitis is the painful inflammation of a tendon or a ligament. It is the opinion of the unit medical adviser, and accepted by the

adjudicator, that this worker's job description of a wall-paper hanger/painter is not compatible with the disabling injury that he now suffers. This worker has now been without any income for several months and remains unable to return to work because of his condition.

Construction workers are required by the Occupational Health and Safety Act and its regulations to wear approved protective footwear when on a construction site. Recent medical findings are indicating that this footwear, worn over an extended period of years, is damaging the covering of the muscles of the feet. Workers usually wear these boots for over eight hours per day. When workers suffer from blisters and ulcers that render them disabled and are directed by their family doctors and specialists not to perform the work as a result of these injuries, it is expected that the board would acknowledge these injuries as work-related. These injuries affect all workers within the construction trades. We represent one such worker who has had his claim denied on the basis that there is an underlying non-compensable condition that has caused the problem.

Back injuries are very debilitating for construction workers. Very often in these claims, injured workers receive decisions that their back injury and subsequent ongoing problems are due to degenerative disc disease. The board has denied workers benefits from the time of their injuries to when their appeal is heard at a hearing. This time period could take from eight to 10 months. Meanwhile, workers suffer great financial losses. We represent workers who because of these board decisions have lost their homes, cars and sometimes their families. Yet when the appeal is heard at the hearings branch level, benefits are granted, as they should have been from the beginning of the claim.

The Workers' Compensation Board is not held accountable for its decisions and there is nothing that can be done to restore the worker to the standard of living that he or she had prior to the accident. The board does not reverse its action in the power of sale it commenced, nor does the board return to the injured worker his or her savings that were used as income while benefits were denied or cut off. The creation of a bipartite committee to address the concerns of this sector, as well as providing practical training for staff at the board, could well alleviate some of the problems that are experienced today.

Vocational rehabilitation services for construction workers are a nightmare. Once a worker's claim enters this phase, it's safe to say that benefits can be quickly terminated. Workers are ruled to be "uncooperative" or "not to benefit from vocational rehabilitation services" for a whole host of reasons. Workers are deemed not to benefit from retraining because of their educational background or because, even if retrained, they would not approximate their pre-accident earnings.

We represent many injured workers who, because they cannot return to their lifelong trade and because of their physical restrictions as a result of their injury, cannot work in a field that would earn them 70% of their pre-accident wages. Approximation dictates that these workers must be able to earn within the 70% bracket to

qualify for retraining and thus continued benefits.

These are some of the problems that we're presently facing with the current legislation. Bill 165 does not address these inadequacies.

But it does address the employer's need for vocational rehabilitation. Bill 165 now includes the employer in every aspect of a vocational rehabilitation program for an injured worker, even if that employer has indicated to the board that there's no intention to re-employ the worker with the company. The changes to this section would allow the employer to interfere with the worker's rehabilitation. It is difficult to comprehend why an employer would require vocational rehabilitation services. It is the worker who is injured. The amendments to vocational rehabilitation services will hinder construction workers in their attempt for retraining and re-employment.

A major problem for construction workers is the deeming provision used in determining future economic loss awards. Employers have hired expensive lawyers and consultants who help guide them in this FEL process. Employers indicate to the board that they have suitable and sustainable work that an injured worker can do with the company. The worker, when able to return to work, even if not fully recovered from the injury, must go back to work for the accident employer.

In this time period, the board has been told by the employer that there will be no wage loss for this worker, as work has been made available. Thus, the future economic loss award is determined at zero or possibly \$1 a month for the next two years. Weeks, possibly days later, the injured worker is then laid off because of shortage of work. We then have an injured worker who cannot be gainfully employed because of the compensable injury.

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There is no check and balance system in place within the board for any repercussions on such employers, and unfortunately this situation is becoming far too frequent. The worker turns to the social assistance system, and again the cost is turned back to the taxpayers, not where it rightfully belongs, on the employer.

The provisions within section 54 of the existing legislation eliminate most construction workers from benefiting from it. Construction workers are discriminated against by section 54 today. Workers within the construction trades rarely work for the same employer for 12 continuous months and most contractors today have less than 20 employees. Therefore, injured construction workers are denied re-employment rights. Bill 165 does not address this wrong. In fact, the new amendment simply allows the board on its own initiative to determine if the employer has fulfilled its obligations to the injured worker.

It is our understanding that the Deputy Minister of Labour is rescheduling a meeting to discuss this concern. We welcome the opportunity to meet and discuss any issue that affects the construction trades. Other topics we are interested in addressing are the multi-employer benefit plan, independent operator status, earnings basis issues that deem construction workers to be seasonal or casual in nature and experience and merit rating programs.

The \$200-pension increase was a negotiated item at the PMLAC table. This concept is sound except that the criteria attached to this provision will limit the number of injured workers who will actually be awarded this increase. Pre-Bill 162 pensioners are receiving such small monthly benefits that any increase will help.

We are representing a construction worker who earned \$70,000 in the eight months prior to his brain injury. Currently, he is now receiving only \$200 a month from the Workers' Compensation Board. He can't even meet his basic monthly expenses on that pension and he would not qualify for the \$200 increase because he would not meet the criteria as outlined in Bill 165.

It is our recommendation that if it is determined that an injured worker is not receiving an adequate permanent disability award, the additional \$200 payment be given.

The Friedland formula has been introduced as a method of capping benefits, which would result in savings in the compensation system. We are opposed to the use of the Friedland formula as well as the de-indexing of benefits. Employers pass on through their businesses the yearly increases we are all faced with. The benefits paid to injured workers are a reduction from their regular paycheque. Workers did not ask to be injured or restricted in their earnings capacity. Due to a workplace injury, their earnings ability can be temporarily or permanently restricted. To take away their right to a cost-of-living allowance is unfair. If the assessments and penalties levied against employers in this province were collected by the Workers' Compensation Board, there would be no need to de-index or to cap injured workers' benefits.

There have been many issues addressed to the standing committee since August 22 regarding Bill 165. You have heard that the present legislation is not serving injured workers in this province. Compensation legislation in 1915 took away our rights as workers to sue our employers if injured on the job. The act speaks to decisions being made in accordance with the real merits and justice of each claim. Too many workers today are being denied that basic right, and with the implementation of Bill 165, injured workers will again continue to be denied their right to a fair compensation system.

It is felt that Bill 165 does not address issues and concerns that affect workers as a whole and in particular the construction sector. A royal commission would look at what we have now, what has been suggested through Bill 165 and offer both labour and management further opportunity to work together to create a fairer compensation system that would reflect the needs of all sectors in this province, including the construction industry.

On behalf of the nine locals that I represent, I thank you for listening to our concerns today.

Interruption.

The Vice-Chair: Just a reminder, this is an extension of the House, and you're welcome to watch the proceedings but not participate.

Mr Randy R. Hope (Chatham-Kent): I want to first of all thank you for your presentation, as you're absolutely right, we've heard a number of concerns with Bill 165,

employers saying, "Bear the cost on the injured worker." We're hearing different viewpoints, especially from the construction industry.

In your presentation, on page 4 you make reference to "a bipartite committee to address the concerns of this sector." Just for more information for myself and maybe for the committee, you're talking particularly about training. You talked about the appeal process. You had to go through an appeal process and in the meantime the individual has suffered financial loss, had to dip into savings, may have lost family or whatever.

Do you see the training of staff improving that appeal process, that the appeals won't be there? Are the appeals being lodged on decisions by the adjudicator or the appeals by the employers? I'm just trying to get a better understanding of where you're coming at.

Ms Nielsen: The appeals are from the workers. It's the quality of decisions that are being made at the adjudicator level that's causing the claims then to go on to the appeal system.

Mr Hope: What do you mean by quality, in just better terminology?

Ms Nielsen: I gave you examples of a wallpaper hanger who has performed his job using his arms above his head, and the medical adviser within that unit has deemed that is not related to his job. If possibly the doctors and the adjudicators and the managers and even the directors of the different units could get out and be trained as to the work processes, then we might not have the terrible decisions that we're having at the client services level.

Mr Mahoney: First of all, just by way of comment, your statement on page 7, "The \$200 pension increase was a negotiated item at the PLMAC table," I understood from the reports I've been given that it sort of fell off the table and they just handed it back to the government to deal with. There was no agreement.

But my question is about the establishment of the bipartite committee. The Labourers' International Union, as you point out, made the recommendation here at this committee. I agree with it. I think it makes some sense. COCA has said they agree with it and it makes some sense.

Just a question. We recommend, in a report we put out entitled Back to the Future, that the Ontario building trades council, COCA and indeed the Union of Injured Workers all should have a seat on the board. Would you be better off having a seat on the board, say, a 12- or a 15-person board, and dealing with it as one of the multistakeholders involved in WCB, or would you be better off with a committee such as what the international union has recommended that pipes into the board?

Ms Nielsen: We would be better off with a committee that would pipe into the board and would then feed into our representative on the board.

Mr Mahoney: Oh, I see. So you'd like both.

Ms Nielsen: Yes.

Mr Mahoney: You'd like a seat on the board as well as a committee to deal specifically with those issues.

Ms Nielsen: The concept of the committee was that it's the workers who know the process, and as I explained to Mr Hope, the adjudicators have no idea as to the work that these workers actually perform on a daily basis.

Mrs Witmer: On the final page, are you suggesting that the royal commission should come before Bill 165?

Ms Nielsen: Yes.

Mrs Witmer: Okay. Thank you very much.

The Vice-Chair: On behalf of this committee, I'd like to thank the Building Trades WCB Services for bringing us their presentation this morning.

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INJURED WORKERS' CONSULTANTS

The Vice-Chair: I'd like to call forward our next presenters, from Injured Workers' Consultants. Good morning and welcome to the committee.

Ms Marion Endicott: Good morning. Injured Workers' Consultants is a community legal clinic funded by the Ontario legal aid plan which has been providing services to injured workers in this province, free of charge, for over 20 years at this point. My name is Marion Endicott and I will be presenting to you today along with my colleagues at Injured Workers' Consultants. On my left is John McKinnon and on my right is Orlando Buonastella.

Our presentation represents a continuation of what the Union of Injured Workers of Ontario had to say earlier this morning. As you will have already gathered, we are extremely disappointed in Bill 165 and indeed have some serious reservations about it. Instead of addressing the real needs of injured workers, this bill has ended up fending off a mythical monster. Like any mythical monster, the unfunded liability is much talked about and worried about, but we haven't yet heard much about the nature of it and its proportions to give us some real concern.

In order to come to terms with this monster, we commissioned a study on the unfunded liability, which was conducted by Michael Webster, who along with his background in economics brings a law degree and a PhD in rational decision-making to his work. Do you all have copies of it at this point? This study explores the history of the WCB's financial structure and points out why a pay-as-you-go system, which is what the board uses at this time primarily, makes the most sense for Ontario's employers. This study deals with many of the myths surrounding the unfunded liability.

For example, there is an idea that the unfunded liability must be paid off to avoid higher assessment rates for future employers. This study shows that even with indexation, the pay-as-you-go system will have assessment rates that are lower than full funding.

There is an idea that the unfunded liability is a provincial debt which will have to be paid off by the people of Ontario with their taxes. This study shows that in reality the Workers' Compensation Act expressly prohibits such a thing from happening, and I guess the bond raters in New York should be told that.

There is an idea that unless the unfunded liability is

paid off, the WCB will not have enough money in the future to pay benefits to injured workers, that like a private insurance company, it is essentially bankrupt. The study shows that a private insurance company would indeed be bankrupt with a similar unfunded liability. Private insurance companies must be fully funded. The WCB cannot be compared to a private insurance company. It is a monopoly which operates on a collective liability system, and as long as there is employment in Ontario, there will be premiums to pay the benefits of injured workers.

The study shows that the unfunded liability is not a monster, and we submit this report to you now, and it should be appended to the brief that was submitted to you by the Union of Injured Workers of Ontario this morning. We would welcome the opportunity to discuss its contents with you as you make your deliberations on this bill.

Now, having said that the unfunded liability is a mythical monster, we do not mean to say that the WCB and Ontario's employers do not face financial problems. They do. One of the problems is the eroding funding base of the WCB.

With only 20 minutes to talk, and my portion of that is even less, I was hoping that maybe a diagram would help. This is a stream of injured workers—can you all see it?—who are being injured and go in and out of the system. Some stay in the system longer and some who have permanent injuries stay in the system for quite a long time. The accident fund, down here, must cover the costs of their compensation.

The accident fund is based on a collective liability system. The benefits of injured workers are protected from the possibility of these companies going out of business because, since it's a collective liability system, as companies go out of business, new companies come along and take up the paying of premiums where the ones that went out left off, the benefits continue and the injured workers continue to be paid. That's the essence of a collective liability system and a pay-as-you-go system.

Now, here's the problem. In this day and age, as these companies are falling out of the system with the changed economy in Ontario, they are not being replaced. So we don't have any new companies coming in to take up the paying of premiums to pay these injured workers. These companies that are left in the traditional industry of Ontario are left paying the whole shot for all these injured workers who have come on stream. This means they are going to have to pay higher premiums. Obviously, fewer people paying the same costs means higher premiums. That is a problem.

But there's a solution to the problem. There's a whole base, in this province, of companies that are not part of the compensation system. We have the banks, the insurance companies, the service sector, law firms, many, many areas of industry that operate without coverage from the workers' compensation system. It is here that all the new jobs, employment opportunities, payroll etc in Ontario are appearing as our economy transforms, spurred on by the free trade agreement and all that kind of thing.

It's all coming in here, but these companies are not

paying anything to the compensation system, so why not make them? Just bring them right up here, and they come up and bring all the companies with them, begin to pay premiums into the system just as these people used to pay premiums into the system and they cover injured workers as the years go by.

Now you say, "Why should these companies have to pay the costs of the accidents that occurred with these companies?" That's the way the system works. When these companies were going out of business, who paid the costs for the workers who were injured in their employ? The new companies that came in. It's the same thing that's happening here. It's just new companies coming in, taking up the costs of the premiums and carrying on.

Our recommendation, our very strong recommendation to you today is that Bill 165 include full coverage of all types of work, all workplaces in Ontario. In BC they've done it; in other jurisdictions they've done it. It takes guts. You have to stand up to the banks, but who should pay the costs of the changing economy: the injured workers of Ontario or the banks?

I've made all my points there. I'd like to draw your attention to another point, another financial issue, and that is the one of experience rating. Employers have been talking to you a lot about why they like experience rating and labour and injured workers have spoken for many years about why they don't like experience rating.

Basically, if this committee wants to improve the financial situation of the WCB, it will move quickly and decisively to get rid of it. There is no evidence that this system is achieving the intended goal of improving health and safety. The employers like to quote a study done by the board, and I highly recommend that you read that study. You will find in the same study a lot of evidence about how the experience rating system is producing a tendency for employers to hide claims and to challenge claims. Certainly, the concrete evidence among injured workers and in unions is that that's what happens.

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It's quite understandable that the employers of the province like it, because while the challenging of claims by employers is costing injured workers and the WCB a lot of money—because when you have a complicated system it becomes more costly, and certainly for injured workers waiting for their benefits it's very costly—employers are benefiting. This is an extract of some of the payments that were made out by the WCB last year. Here is the amount of money, \$100 million, that was required to totally cover all the costs for the Workers' Compensation Appeals Tribunal, the office of the worker adviser, the office of the employer adviser; all those agencies the board must cover by its legislated obligations.

Here is the amount that the board paid last year, the total amount for non-economic loss awards. Here is the amount for future economic loss awards, this is the amount for the administration of the WCB and this is the amount that employers are getting back, from the WCB, in rebates under the experience rating plan.

This is the net amount. It is a total extraction from the

accident fund of \$295 million last year and it's expected to be about the same this year.

What we say is that there's a much better use for that money. If you put the \$295 million that employers are actually being paid out of the accident fund, which is actually intended for injured workers, and put it next to some of the costs, you can see that with that same money you could pay all of the FELs, all of the NELs, the total cost of the Workers' Compensation Appeals Tribunal and all those other agencies and the \$200 a month to the pre-1990 injured workers at the cost of \$85 million a year without raising premiums one cent. Just stop giving that money back to the employers. You could also pay twice as many injured workers \$200 a month from pre-1990 and you still won't raise premiums one cent.

So our very strong recommendation to you today is, once again, that you get rid of experience rating. At least get rid of experience rating that's based on claims frequency and costs, which is essentially duration. With that, I'll turn to John, who is going to be speaking primarily on rehabilitation issues.

Mr John McKinnon: I'm going to be highlighting some of the points that appear in our joint brief, the joint submission by the Union of Injured Workers, Injured Workers' Consultants and Industrial Accident Victims Group of Ontario. You received that earlier on. Specifically, I'm just going to highlight the points about job search provisions, about the mediation provisions, about voc rehab for employers and about employer access to injured worker doctors.

Voc rehab is important because the financial consequences are very clear. Employers have the means at their disposal to reduce workers' compensation costs by reducing accidents and by employing more injured workers. It's a simple formula. Either you hire more injured workers or you pay higher assessments. Everyone knows there are big problems with voc rehab at the board. If the board set up a 1-800 number to call with complaints about voc rehab, I'm sure it would take all 4,700 employees just to deal with the calls.

But it's important to remember, as Phil Biggin pointed out on behalf of the Union of Injured Workers, that this is not a new problem. It's been studied in great detail, commencing in the early 1980s with the Weiler study. I just wanted to remind you of the history, because it's been studied by Weiler, and Weiler studies have been analysed and responded to by the legal clinics. Following that, the government put another commission, the Minna-Majesky task force, on voc rehab, then we got Bill 162 and then we got the Chairman's Task Force on Service Delivery and Vocational Rehabilitation by Odoardo Di Santo.

There's a lot of history in looking at the problems of voc rehab at the board. Phil Biggin pointed out what Paul Weiler found. In 1981 he did a study: 39.5% of permanently disabled injured workers are unemployed. What do you think we have now? The board released the figures in a recent study. Injured workers who have been off work for more than a year and have permanent impairments: 78% unemployment, twice as appalling as it was before.

The amazing thing about the provisions that we see here in Bill 165, these limits on job search, the mediation voc rehab for employers' to access injured workers, is that they come right out of left field. All this stuff is still sitting on a shelf in spite of the fact that a lot of preliminary work, massive amounts of government money and huge public hearings have gone into addressing how to fix voc rehab. The measures in Bill 165 ignore that. They ignore it. It looks like someone is trying to reinvent the wheel.

I just want to comment specifically on some things. Our proposals are in more detail in the longer brief, but let's start with the job search proposals.

Bill 165 makes some proposals to change the word "shall" to "may" in the section dealing with the extension of job search for an additional six months when an injured worker is unable to find work. Clearly, as a matter of statutory interpretation, changing the word "shall" to "may" is an invitation to the board adjudicators to use their discretion, and clearly all experience shows that they'll use that discretion to refuse an extension of job search. It's clearly a signal to the board adjudicators that they can and should start reducing the time allowed to look for work.

But wait a minute. The problem is that injured workers aren't getting back to work, and we see here a proposal to reduce the job search that's available to injured workers. That's incredible and it ignores the problem. If an injured worker completes the voc rehab process and follows the rules, diligently looking for work to the satisfaction of the voc rehab case worker, whether it's for six months or whether it's for a year, and still there's no job, should we just cut that person off and make him go away? Is that the way to deal with the problem? That's ridiculous. Obviously, either the search has to continue or else the job isn't actually available, contrary to what the statute requires, and therefore we have to reconsider either the future economic loss award or the voc rehab program.

I wanted to touch on mediation too, because this is a bold new move, but again it's misguided. This proposal, mediation in the voc rehab process, comes out of nowhere. We've got the Weiler reports, we've got the Minna-Majesky task force chock-full of really good recommendations, and instead we see mediation in the voc rehab process which is not one of these recommendations.

The deputy minister said, from the Hansard, "It reflects contemporary and successful trends in dispute resolution in Canada and across the world." But look, have you seen any evaluation of whether mediation in the voc rehab process is effective at solving the problem we have with the Workers' Compensation Board? I don't think so. There's been a lot of study and that evidence just isn't there.

Mediation, in our submission, is misguided because this is a process that helps two equal parties on a level playing field to complete a bargaining process, to reach a conclusion that they both find mutually beneficial. But voc rehab, in our view, is not necessarily a subject that is amenable to wheeling and dealing, because the whole

injured worker's future is at stake here. It's not just another sale or another term in a contract that's going to be up for renewal in a year or so.

The problem is, of course, that the parties are not equal. This is particularly true for the unrepresented injured worker, and that's most of the injured workers, since only 37% of the workforce is represented by trade unions, and some of those unions don't do WCB cases. The legal clinics and the office of the worker adviser can't handle a fraction of the people with problems left over outside of the trade union movement. Our experience is that it's the nature of the mediation process that injured workers get pressured to settle for less than their rights under the act.

As you know, without changing the act, the board already introduced mediation into the re-employment process. The calls we get are from injured workers who feel they're being pressured by the mediator to settle for less than they're provided under the act. In our view, they're generally right. In fact, we get calls regularly from injured workers in the middle of mediation who are being urged by the mediator to accept cash payment in return for giving up their re-employment rights. Why? Because the employer has indicated that they're taking a hard line and because the mediator has indicated that the appeal process down to the end of the WCAT is a very long road. Mediation pressures injured workers to make deals that go against their long-term best interests.

You don't need to change the act to use mediation. It was introduced in re-employment without changing the act. If you think it might work, fine. Set up a pilot project and evaluate it properly, but don't change the act when none of the research so far gives us any reason to expect that mediation is the solution to the problem. Don't change the act on a hunch, because we should not gamble with the future of injured workers.

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The Vice-Chair: If I may interrupt, you have about two minutes left for your presentation.

Mr McKinnon: All right. I wanted to mention voc rehab for employers. Employers don't need voc rehab. This cut-and-paste approach is ludicrous. At most, they need assistance in fulfilling their obligations under the act and they have a different interest.

Employer access to injured workers' doctors—should we, the people of Ontario who pay your salary, have access to your doctor if you're injured on the job? In essence, we feel the amendment in Bill 165 is a significant and unnecessary intrusion into doctor-patient confidentiality.

I think I'll wrap up my comments now and turn it over to Orlando.

Mr Orlando Buonastella: In the one minute I have left, I will simply tell you that there are many injured workers today. Some of them are in this room and others are in other rooms. I'm sure that you, as politicians, have detected the emotion that's there. That emotion signifies that they want justice. They want a law that really addresses them. I think the message they're telling this committee is that they're not satisfied at all with Bill 165.

What injured workers want is a law and a process that are not driven by faceless actuarial people but a law that's driven by real people with a face, with a name, often with a family, with dependents, with a lot of dignity and a lot of intelligence. These injured workers want something good done for them because they were good, before they were injured, for this province. They were very good, and after they got their injury they were no longer any good.

We talk about: "They cost too much money. We have to find ways to reduce their moneys." We want to send you the message that you should not, you must not, cut their moneys. You should not de-index their benefits, because we're not talking about Bill 165 here; we're making a statement about what kind of a province we have. Are we a province that respects and protects the people who got injured on the job? Surely we are, and therefore we need a law that doesn't cut benefits and doesn't cut their dignity. I would urge you to think of injured workers and do something for their dignity.

Most important, don't divide injured workers. Don't pay one group of injured workers by taking the money away from another group of injured workers. Don't pit older injured workers against new injured workers. Don't pit the injured workers of yesterday against the injured workers of today or the injured workers of the future. As Marion said, there's enough money there to do something for the older injured workers without cutting benefits to other injured workers.

We want unity. We are a family. Injured workers are a family and we don't want one child to get something and the other child to get something taken away. We want unity and we want some justice. We appeal to you to think and do something good for injured workers. Thank you very much.

The Vice-Chair: You went a couple of minutes over, but on behalf of this committee I'd like to thank the Injured Workers' Consultants for bringing us their presentation this morning.

Mr Hope: Mr Chair, would it be possible to obtain the study by the board that was brought up by the—

The Vice-Chair: I'm sure that would be available.

Mr Hope: If research could get us a copy of the report. Their presentation made reference to the study done by the board.

AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

The Vice-Chair: I'd like to call forward our next presenters from the Automotive Parts Manufacturers' Association. Good morning and welcome to the committee.

Ms Elizabeth Mills: Good morning. The Automotive Parts Manufacturers' Association is pleased to have this opportunity on behalf of its members to provide its comments on Bill 165, An Act to amend the Workers' Compensation Act and Occupational Health and Safety Act.

I understand that the committee has been overwhelmed with requests to make representations and that your provincial tour responded to a large demand for attention

as well. It would have been more effective, in our view, to extend the duration of the hearings on this controversial topic rather than to limit the duration of each presenter to 20 minutes, a time frame I am sure you have recognized limits your opportunity for an exchange of ideas.

Today I have with me Paul Teeple, director of human resources for Hayes Dana Inc., a member of the APMA. He is also the chair of our people-systems committee. My name is Elizabeth Mills. I'm the director of policy development for the association. I draw to your attention the brochure in which you find a copy of our remarks today. The brochure lists on the back cover all of the members of our association for your information.

The APMA is a national association representing OEM, that's original equipment manufacturer-producers, of parts, equipment, tools, supplies and services for the worldwide automotive industry. Founded in 1952, we have 400 members accounting for 90% of the independent parts producers production in Canada. In 1993, our automotive parts sales were \$16.3 billion and our industry employed 77,000 people. Our projected sales for 1994 are \$18 billion and employment of 84,000 people. Eighty-eight per cent of the independent parts production and employment is currently located in Ontario.

The APMA's fundamental objectives are: to promote the automotive parts manufacturing industry both domestically and internationally through liaison with the vehicle manufacturers' and labour groups; representation to both federal and provincial governments; to provide information and educational programs; to promote international trade and business opportunities and to develop globe awareness programs.

The global character of our industry cannot be undervalued when determining the long-term success and competitiveness of our businesses. Paul will return to this point momentarily, but before Paul begins, I would like to draw your attention to one final document which outlines our associations' positions on issues of public interest, including our thoughts on workers' compensation and health and safety on pages 4 and 5.

Mr Paul Teeple: Our industry in Ontario employs approximately 67,200 people. In 1993 the firms employing these people paid \$148 million to the compensation board, while the automotive manufacturing industry overall contributed \$291 million. From 1990 to 1993, our industry has reduced the frequency of injury by over 50%, and yet our rates continue to soar well beyond inflation.

These increases are in stark contrast to the business realities our companies face every day. The pressures of restructuring within the global business sector have had and will continue to have a significant impact on Ontario and its companies.

Let me illustrate. Despite the recent reversal of trends, the major change in market share away from the Big Three to the Japanese brand vehicles, whether they're produced in North America or imported, has given rise to a much more customer-focused industry with quality, cost, delivery and customer service as the primary criteria for success.

To meet these competitive challenges, we are converting from mass production to lean production, a very difficult task due to the major changes in culture, philosophy and values involved with both labour and management.

This is resulting in a tier structure in the parts industry. Tier 1 suppliers at the top of the structure are full-service suppliers with R&D and design-in engineering capabilities, while the tier 2 suppliers are learning to market their capabilities to many new companies, a number of which used to be their competitors.

Continuous improvement everywhere, while meeting the competitive demand for price reduction, is now a way of life for all of us. As an example, one assembler stated that they have obtained average price reductions of 15% from their suppliers over the last three years. The APMA are those suppliers.

What has the impact of all this been? Today the Canadian auto parts industry has 54 fewer companies and 25,000 fewer employees than it did in 1989. Branch plants have consolidated, companies unable to adjust or cope financially have shut down or merged. The balance, however, have developed into globally competitive companies that are lean and customer focused.

What do I want you to take from all of this? The compensation system is a direct cost to the bottom lines of the employers of this province. It is a cost seemingly out of control and one which is not to be addressed by the proposed reforms of Bill 165. This direct cost has a larger impact than the costs which I'm sure you have heard about in the past three weeks.

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The decisions to invest or establish an investment in this province are ones made every day, decisions that are frequently not in our province's favour because to establish a new business here means to adopt a portion of the debt created by a system as yet unused by that new employer and obviously out of control. For the current employer, it is a debt which we have been attempting to eliminate with excessive increases in our assessment rates with the incredulous results of an expanded debt with an undefinable end.

The Workers' Compensation Board needs to be run as a business, managed with the principles of lean production in mind, and a focus on its sustained ability to meet the demands of the customer: the injured worker and the Ontario employers. There are relatively few options for a merger for the WCB, and yet, this massive institution continues to be steered along a course to shutdown.

I would like to tell you what our association does promote and encourage our members to act upon when it comes to the Workers' Compensation Board. The APMA is committed to and actively supports efforts that enhance the health and safety of the individual automotive parts worker, and establishes methods and workplace practices that identify and prevent accidents.

In advocating this policy, the APMA encourages its members to seek and participate in training and workplace programs that reduce the incidents of injuries to the automotive parts worker, and wherever possible,

ensure that the workplace meets or exceeds current standards and regulations.

The APMA advocates that members strive to minimize adverse impacts of workplaces on the employees through training, accident prevention, rehabilitation and rapid re-employment. We care about our employees and their families, but the APMA believes that, where practical, voluntary actions and market instruments are preferable and more efficient than regulatory means in addressing health and safety issues. The APMA believes that the WCB should strive to recognize through appropriate rebates and assessment rates those investments of employers whose accident rates are declining, so that awarded resources can be spent on training and workplace improvements.

If the WCB is to achieve a system that is financially sustainable over the long-term, it is essential that all parties to the system accept the principle that a framework of financial responsibility is the cornerstone to any meaningful reform. Without this critical understanding, the APMA believes that modifications or changes in any of the policy issues can at best only amount to short-term fixes.

We believe that the current workers' compensation system has four main problems: Continued confrontation is driven by the trend to compensate non-acute trauma; the level of expectation for benefits and services is beyond the scope of the single service program; the system is not financially sustainable; time, energy, and financial costs incurred by all concerned to deliver complex administrative services to injured workers makes the system cost-ineffective.

The APMA is actively seeking measurable results from the workers' compensation system that will reduce costs without hurting the injured worker. Through our participation in the Premier's Labour-Management Advisory Committee and various reference groups and committees and a focus on cost-reduction, it may be possible to regain stability in a system currently in crisis, beyond the control of its administrators and beyond the ability of employers to support it.

The APMA is convinced that the viability of the system and ever-increasing costs to employers put both the system and jobs in Ontario at risk. Equally, it is threatening an employer's ability to compete in a global marketplace which will result in further employment loss and loss of revenue that is needed to support the system. The APMA seeks the development of a competitive system that balances inputs and outputs, which is financially sound, responsive to the shareholders, and is enshrined in law and free of political involvement.

In addition to the beliefs we have just stated, the APMA has found that many other associations and employers share our views. As a member of the Employers' Council on Workers' Compensation, the APMA would like to reaffirm our commitment to the solutions and proposals previously outlined by many of our previous members.

I am now going to focus the remainder of my remarks on some specific aspects of Bill 165. The bill does not relieve the concerns my association members have shared

with me since the government's May 1994 announcements. Indeed, the unified and common reaction to these proposals is as follows:

—The government has lost the opportunity to present and move forward with meaningful reform as suggested in Bill 165. This bill ensures that costs and problems of doing business in Ontario will decrease our ability to compete globally and cause them to look in alternate provinces and countries for their next investment.

—This bill ignores the well researched and documented reality that the compensation board is broke and adds an unprecedented \$1.5 billion to the unfunded liability at a time when the board is experiencing negative cash flow.

—The bill scuttles an experience rating system that has motivated and produced significant and meaningful change within the workplace for injured workers and all employees without interventionist regulation and red tape and throws back the investments made by employers to meet the changing needs and demands of its workforce.

—This bill ignores the united business community's proposals in the fall of 1993 and it cherry-picks from the temporary accord from March 1994, casting aside the volume of comprehensive research undertaken by the Premier's advisers, which is workable, actuarially supported and fair to all stakeholders. Without repeating unnecessarily what has been heard many times before, the APMA supports the recommendations of the PLMAC.

—The government should withdraw Bill 165 and return to the discussion table to develop a concrete, competitive path of reform measures that ensure the viability of the system for the workers.

—The government should get out of the WCB process, take politics out of the decisions and allow it to be run as a business, not like it has for the past 10 years or even before.

In regard to the purpose clause, the bill's purpose clause focuses solely on the benefits to workers. It binds the board to expanded benefit entitlements, and in the absence of a financial responsibility framework, creates no standards for improving the accountability standards or the efficiency of the system. The purpose clause is not one developed from consensus, but is one that is being hoisted from a proposal that also promotes fair compensation, health care benefits and rehabilitation services with regard for the impact of changes to benefits or programs on employers. To put it simply, this clause is ridiculously politically one-sided.

Vocational rehabilitation is the core element of Ontario's workers' compensation system. This element has been examined twice in recent past: in 1987 under the Ontario Task Force on the Vocational Rehabilitation Services of the Workers' Compensation Board and in 1992 in the Chairman's Task Force on Service Delivery and Vocational Rehabilitation.

Currently, employers are subjected to stringent obligations to re-employ workers, and we do have responsibilities in that regard. The proposed amendments in this area do nothing to address the WCAT criticisms of the WCB in this area, but instead expand the powers of the board

to intervene in the absence of a specific complaint, serving no policy purpose or need. The APMA sees no gain in the expansion of the WCB powers. In fact, in our view, it gives the WCB greater powers than the police have during criminal investigations.

The APMA does not believe in the abilities of bipartisanship. The government has many working demonstrations of how this system does not currently work, including the board itself. It has failed at the Workplace Health and Safety Agency, the Joint Steering Committee on Hazardous Substances and PLMAC. One of the key founding principles of the compensation board in Ontario is a clear division of powers between the board and the government. The bill's proposal offends this safeguard, and with the additional proposal of the memorandum of understanding, it is a dangerous precedent and risk that politicizes the functions of the board rather than separating the government from them.

Bill 165 contemplates a broader protection for members of the board of directors, officers and employees of the board. Incredibly, the bill proposes to extend the protection afforded to board representatives to any proceeding brought as a result of the exercise of judicial responsibility. In an era of rhetoric surrounding greater accountability in government and in decision-making, this recommendation is offensive to the need to make employees and members of the board aware of the statutes that bind them and to understand the unfolding jurisprudence in determining claims for entitlement. An independent WCB, removed from political influences, should be required to meet the rules and expectations that guide the functions of any board of directors in the province.

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Bill 165 introduces changes to how the experience rating system is administered. The development of experience rating in Ontario represents one of the best examples of joint policy development between business and government. Since its inception, the NEER program has been supported by the automotive parts industry. Under the amendments, NEER will no longer help to promote fair distribution of the assessment dollars and encourage employer accountability for accident prevention and WCB claims. I remember talking to the hearings when NEER first came in about how it was going to be revenue-neutral. It doesn't appear to be.

The NEER program has motivated significant numbers of parts producers in the province to reorganize company medical departments to take proactive roles in occupational health and safety, to introduce sophisticated and workable modified work programs, to develop and implement sound ergonomic principles and to initiate many other successful programs based upon a high level of employee involvement in health and safety awareness.

Several internal board studies as well as careful PLMAC review fully endorse the current administration of the NEER program. Under the amendments, refunds may be eliminated and surcharges increased through purely subjective investigations by the board. This move undermines the integrity of experience rating and provides the board with unsurpassed interventionist powers. This is not needed, not warranted and not productive.

This type of government interference will further damage Ontario's competitiveness.

Our message to the government is clear on this: Experience rating works. Do not try to fix something that's not broken. Simply leave experience rating alone.

Indexing: Section 33 of the bill proposes to provide a new formula for calculating all compensation payable, the Friedland formula. Introduced by the business caucus of PLMAC, this idea has been cherry-picked and violated by exemptions. There can be no exemptions from the formula, for the reality is that the PLMAC proposal creates an immediate elimination of \$3.3 billion of the unfunded liability and complete retirement of its debt by 2014. The APMA fully supports the original PLMAC business caucus proposal.

In conclusion, the APMA has long recognized the need for reforming the compensation board, and efforts in this area have been ongoing for over a decade when the unfunded liability was at \$2.7 billion. The APMA is committed to and actively supports efforts that enhance the health and safety of individual auto parts workers and establish methods and workplace practices that identify and prevent accidents.

The APMA advocates that its members strive to minimize the adverse impacts of the workplace on employees through training, accident prevention, rehabilitation and rapid re-employment. These practices make good business sense.

The APMA represented its members in a great deal of work that was undertaken during the PLMAC process last fall, believing that research, documentation, analysis and meaningful discussion would lead to meaningful and workable proposals. It is beyond the capability of these words to express the outrage and betrayal felt by our members at the end of the PLMAC process.

The proposals that were developed required everyone to give and everyone to hurt, and most importantly, created a clear path towards meaningful reform. Critically lost among all of this is the continuing need to ensure that benefits necessary for injured workers are available long into the future. These are now at risk.

Bill 165 fails the injured worker, it fails to meet the objectives provided by the Premier to PLMAC and it fails to address the competitive nature of the global economy. Left as it is, the bill will bankrupt the system and cause workers to eventually lose the benefits they justly deserve. We urge the government to withdraw the legislation and reconsider the recommendations of the PLMAC.

Mr Mahoney: When the unfunded liability is the difference between the assets on hand and the long-term debt, ie the pensions over the lifespan of the injured workers etc—and you obviously don't have to pay those out right away today; they come due as the worker lives and stays on compensation—I wonder if you could explain, because we hear both sides of this argument, why it's so important to business to fund that 100%. It would seem to me that taking money from the business community, putting it into a fund to fund it 100%, and yet it won't be drawn on actuarially for many, many

years—why would business want to tie their money up?

Mr Teeple: I don't think it's a matter of tying up money; it's just making promises into the future that may not be able to be kept. There is a history at the compensation board of not only promising a dollar value into the future, but going into the future enhancing that dollar value and adding more and more and more liabilities. It's not what's promised to the injured worker—and well deserved in many, many cases—in 1994; it's what that promise increases. Many times by 1997, somebody's gone back and said, "Gee, what we told you in 1994 was not sufficient; we're going to give you more now." That liability just continues to grow, and now you've got fewer and fewer employees in an industry such as ours paying the same debts. Where at one time we had 100,000 people in this province, now we've got 67,000 people paying the same debt that was incurred when we had 100,000 people.

Mr Bill Murdoch (Grey-Owen Sound): I want to thank you for your presentation. I certainly appreciate it. I know Monroe automotive will appreciate it in my riding.

You mention now that this bill should be withdrawn, and try again. I just wonder, how much consultation did the government or anyone have with you before they introduced this bill, with your group?

Ms Mills: The PLMAC process was a process in which I think a lot of employers in the province, a lot of labour groups in the province did a tremendous amount of consulting work. I know of over 80 individuals who sat through horrendous, long committee hearings and meetings throughout the course of last summer, and certainly we've seen this morning a wealth of knowledge that this government has already developed on a variety of issues on the workers' compensation system. The answers have been provided to the government time and time again, and that the government would then have been able to produce this bill as its view of the solutions is incredible to our members and those of many of the employers in the province. The bill does not represent much of the discussion and much of the work that was undertaken.

Mr Murdoch: So it would be safe to say that they consulted.

Interjection: But they didn't listen.

Ms Murdock: You want the November business proposal in regard to benefits, as stated in your brief, which is to drop benefits from 90% to 85%, strictly limit eligibility requirements for benefits, as well as—I'm trying to remember—the Friedland formula on everyone, with no exemptions, and all of that will eliminate the unfunded liability. And at the same time, there is an increase to the unfunded liability through the NEER program, because last year the surcharges created were about \$95 million and the payouts were over \$150 million. There is an offset that is not being met. I mean, I could talk to you for hours on your entire proposal—

The Vice-Chair: Briefly, Ms Murdock.

Ms Murdock: —but on that section alone, how can you ask for all of those things to be taken off of injured

workers, who injured themselves on the job, and do nothing on the other side?

Ms Mills: I'd like to correct your view perhaps through a longer discussion about where it is NEER gets its funding from. It's not generated out of the revenues from the board.

Ms Murdock: No, I know that. It's surcharges.

Ms Mills: NEER was designed to be revenue-neutral, and the employer community has told the board—the ECWC has presented the board with the solutions to the formula development within the NEER program. Documentation can be provided to the committee about how it is this can be fixed so that the surcharges that you're experiencing at the board will no longer be a problem.

Ms Murdock: There's a long story there.

The Vice-Chair: Thank you very much.

Ms Mills: That's right. That's why I suggested a long discussion.

The Vice-Chair: On behalf of this committee, I'd like to thank the Automotive Parts Manufacturers' Association for their presentation to the committee this morning.

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UNITED STEELWORKERS OF AMERICA,
DISTRICT 6

The Vice-Chair: I'd like to call forward our next presenters, from the United Steelworkers of America, District 6 office. Good afternoon and welcome to the committee. Once again, a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate if you'd leave a little time for questions and comments. Could you please identify yourself for the record and then proceed.

Mr Henry Hynd: My name is Henry Hynd.

Mr John Perquin: My name is John Perquin. I'm the health and safety coordinator for the district.

Mr Hynd: Good afternoon. On behalf of the United Steelworkers of America, I would like to take this opportunity to commend the government of Ontario, and in particular the Minister of Labour, the Honourable Bob Mackenzie, for having the will to put forward this piece of legislation even in the face of opposition from the business community.

Injured workers in this province have been suffering due to the injustices of a faulty compensation system, especially since the introduction of Bill 162 some five long years ago. Bill 165, although not perfect, seeks to correct some of those injustices. In particular, it seeks to strengthen the rights of injured workers to return to work in their pre-accident employment, a right that we have been pressing for for many years.

I want to share with you a few of the thoughts we have about Bill 165 and the government's intention to establish a royal commission. I want to give some examples of why changes are needed to the existing Workers' Compensation Act. At the end of our written submission, you will find an appendix which deals with some specific items of the bill and our suggestions for improvements to those items.

While Bill 165 makes a good attempt at addressing

some of the more pressing problems of the Workers' Compensation Board system, and while it appears to closely mirror the business-labour agreement negotiated by the Premier's Labour-Management Advisory Committee, we believe the legislation's drafters have made some serious mistakes in the legislative language. As a result, we believe the intent of certain amendments has been lost. I trust that you will have an opportunity to examine these points more fully in your ensuing deliberations following these hearings.

The United Steelworkers of America represents some 60,000 members in the province of Ontario. Our members work in a variety of occupations and industries ranging from clerks to miners, hotel employees to assembly line workers, security personnel to truck drivers; from banks to steel mills, from nursing homes to retail stores, from manufacturing plants to warehouses, and in these manufacturing plants we have some from the automotive parts industry. Our members' experiences with the Workers' Compensation Board range from good to bad, from no problems to very frustrating problems. In my capacity as director, I have come to you today to express those frustrations and to urge you to set about your work of reporting back to the government.

Workers who have suffered the hardship of becoming permanently disabled as a result of workplace injuries have a very serious problem indeed. Not only do these people suffer from constant pain, with all of its associated difficulties, but more often than not they also suffer from poverty.

I am sure you are aware that there was no obligation on employers to return injured workers back to work prior to 1989, when Bill 162 was introduced. The consequence of this is that some 40,000 workers are being forced to survive on meagre disability pensions and welfare, if they are eligible. These are workers who have been judged by the Workers' Compensation Board to be unlikely to benefit from rehabilitation. One could say that for these workers, the employers have been able to shift the costs of injury to their workers on to society as a whole. We say shame on them. Some of those employers are employers that our union has dealt with in the past and in many cases still deals with today. Bill 165 seeks to repair this injustice by topping up the pensions for these injured workers and by giving full indexing protection.

Bill 165 also seeks to strengthen the obligations on employers to re-employ their injured workers and to cooperate in meaningful rehabilitation programs where they may prove to be beneficial. Our union can tell you many horror stories about employers who have refused to re-employ injured workers even after the implementation of Bill 162. We can tell you of an employer in Toronto that openly and outrightly refuses to re-employ injured workers and would rather pay the penalties set out in the act. We can tell you about another employer in the Westonia area that challenges each and every claim filed by its employees, irrespective of when and where and under what circumstances the injury occurred. We can tell you of other employers in the province who have taken the approach that their workplace is a workplace in which no

accommodations can be made, irrespective of the nature of the disability.

Should you wish to discuss these examples with us or have us provide greater detail and more examples, we would be more than willing to do so.

For employers in this province who are seeking to bring about savings in the compensation system, we say to them that rehabilitation and re-employment are the two main areas where significant cost savings to the system can be achieved without impacting negatively on the benefits for injured workers. The work done earlier by the PLMAC estimated that savings in the order of \$1.5 billion to \$2.5 billion could be achieved by the year 2014 if employers and workers cooperated in early intervention leading to meaningful rehabilitation where necessary and to meaningful re-employment. We say that Bill 165 seeks to address these concerns.

The financial health of the Workers' Compensation Board system is often said to be in a near-disaster state. By whose accounting? Certainly not by labour nor by injured workers. Let us examine this for a minute.

Today, the unfunded liability is estimated at \$11.6 billion, and some unscrupulous employer lobbyists say that the unfunded liability will grow to \$13 billion by the year 2014. These numbers are being used to argue for benefit cuts. These numbers are used to portray a system that has runaway costs. However, these lobbyists are not telling the full story. Ten years ago, the Workers' Compensation Board assets covered 32% of its long-term liability. Today, its assets cover approximately 37% of its liabilities. By the year 2014, it is projected that the board's assets will cover approximately 55% of its long-term liabilities if the provisions of Bill 165 are implemented. The \$13-billion figure is actually inflated dollars for the year 2014. This is hardly a runaway system in danger of failure.

We are pleased to see that the bill calls for a newly constituted board of directors, one that will be truly bipartite in makeup. Our experience has been that bipartism, while difficult, does work, and it brings about meaningful solutions.

The United Steelworkers of America has long been an equal participant on the Mining Legislative Review Committee. More recently, since the inception of the Workplace Health and Safety Agency, we have had a representative on its bipartite board of directors. Currently, I am the representative. I can tell you categorically, from my own personal experience, bipartism does work. The Workplace Health and Safety Agency has had to make in excess of 300 decisions since its inception, and only once has one of those decisions had to be made through a vote. Consensus has always been the approach used, both at the Workplace Health and Safety Agency and the Mining Legislative Review Committee. The Mining Legislative Review Committee has made countless recommendations for changes to the mining regulations. There too, in almost all cases, consensus has been reached on recommendations.

I am convinced the proposed bipartite structure of the Workers' Compensation Board board of directors will be a successful one, resulting in meaningful accomplish-

ments for the system and its stakeholders.

In the discussions leading up to the government's introduction of Bill 165, the stakeholders recognized that reform of the system needed to take place in two stages, short-term and long-term. Bill 165 attempts to address those short-term issues, and when the government announced its intention to form a royal commission to look at the bigger picture and issues such as coverage, entitlement, occupational disease, universal disability insurance, benefit levels, indexing, finances etc, we in the Steelworkers welcomed such a royal commission.

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We hope that the commission's recommendations will result in a comprehensive Workers' Compensation Board system, a much different system than we have today: one that will see injured workers being able to live out their lives with dignity and respect; one that will see almost every injured worker returned to meaningful employment; one that will see us no longer having to argue about causation, particularly when looking at occupational disease; one that will see all workers covered; one that will see an end to the human misery and suffering caused by poverty among injured workers.

It is rumoured that Lynn Williams, retired president of the United Steelworkers of America, has been asked to act as chairperson of the royal commission. We are hearing rumblings coming from within the business community that if Lynn Williams is chosen to head up that commission, then the commission is doomed to failure because business will boycott the process. We say, "Shame on the proponents of such a boycott."

Having known Lynn Williams for many years on a personal level as well as a professional level, I know that Lynn Williams would do an outstanding job in heading up the royal commission were he to be appointed as the chairperson. Lynn has earned the utmost respect from people all over the world, including workers, those from business and from government. His integrity is beyond reproach. Lynn is held in the highest regard as being a fairminded individual, a person who listens and who is open to new ideas and change, an intellectual with an amazing capacity to get the task accomplished. Needless to say, I personally and my organization, the Steelworkers, strongly urge the government to formally announce his appointment as the chairperson of the royal commission.

I want to take a brief moment to highlight two areas in which we see some shortcomings with the bill. The United Steelworkers of America is not overly enthused with the fact that the bill contains a provision known more commonly as the Friedland formula. This formula, which was originally designed to deal with the indexing of retirement pensions, will be applied to injured workers' benefits upon the passing of this bill. Other than those exempt from this formula, injured workers will see their benefits rise at a lower rate than that of inflation and consequently will risk falling behind and possibly being saddled with having to accept a lower standard of living.

We do not believe that this will be particularly healthy for anyone. However, we do recognize that this formula was agreed to in the spirit of negotiations between the

stakeholders during the PLMAC discussions. We also recognize that, when coupled with the stronger re-employment and rehabilitation provisions of the bill, those workers affected will, in the main, be those who are back at work.

Nevertheless, there is one aspect of the formula to which we are strongly opposed. We feel that the inclusion of a cap in the formula is punitive to injured workers, particularly in times of rapidly rising and high inflation. Given that typically during periods of high inflation wages also increase at similar rates, and given that the Workers' Compensation Board assessments are based on payroll, the system is adequately protected against increased costs, and thus there is no need for a cap to be contained in the formula. We strongly believe that the cap cannot be justified and it must be removed.

Lastly, while Bill 165 takes special measures for those disabled workers who are unemployed and were injured prior to 1990, it misses a small group of injured and permanently disabled workers who were over the age of 65 at the time Bill 162 became law and subsection 147(7) was included in the act. These disabled workers, who are now over 70 years of age, live in extremely difficult circumstances. Bill 165 denies them the \$200 increase in their pensions solely because of their age. An increase in the pensions of this group is a matter of justice and dignity, to say nothing of equity.

The time has come for change to the current workers' compensation system. Injured workers deserve nothing less than respect and dignity; today they do not enjoy that. Bill 165, with our suggested amendments, indicated in the appendices, will go a long way to ensuring that respect and dignity becomes inherent in the system. With Bill 165 passed into law, the royal commission can then begin the important task of making recommendations for rebuilding the system to reflect the needs of tomorrow's society.

On behalf of the over 60,000 men and women who make up the Steelworkers in Ontario, a number of whom are themselves injured and disabled, I want to encourage you, the members of the standing committee on resources development, to take the recommendations contained within this submission to the government. I also urge you to encourage the government to get on with the task of system-wide reform through the royal commission.

Thank you for the opportunity to present to you the views of the United Steelworkers of America on this bill.

Mr Arnott: Thank you, Mr Hynd, for your presentation. I want to pick up on your suggestion about the royal commission head. You're suggesting that Lynn Williams be the head of the commission. I'm not surprised that you might make that assessment; you know him personally and you've worked with him, I'm sure, for many, many years. Do you not, though, think that it would be preferable to have someone appointed who is considered to be independent and is not a direct stakeholder in the process to come up with a series of suggestions which are completely impartial and perceived as such?

Mr Hynd: Quite frankly, I think that Lynn Williams would be impartial. I think Lynn Williams, in a role as head of a commission, would play that role as well if not

better than anybody I can think of. There have been many heads of commissions established in government over the years that I would say represent the business community, while people weren't enthralled with that. I wouldn't consider Dr Ham, as an example, to be independent, and he headed up a commission on safety and health, a commission that delivered results that we were quite pleased with. We would have gone further had we had control of that commission, but we lived with the recommendations made. So I have no fears that Lynn Williams would make a significant contribution to improving the system of workers' compensation in the province of Ontario.

Ms Murdock: I celebrated the 100th anniversary of Labour Day at the Steel picnic on Monday, so good to see you.

We've heard much about the PLMAC agreement of March 1994. It's seen so significantly differently by both sides: that it wasn't an agreement, that they want to go back, and business in many instances wants to go back to the November presentation. How do you see that PLMAC agreement, and what was it that was agreed to?

Mr Hynd: Rather than tell you what was agreed to, because what was agreed to was agreed to—it's there; it's clear—one of the difficulties of bipartism, quite frankly, is the business community very seldom is able to put anyone into any committee that has the full support of the business community. On the workers' health and safety committee, on the agency, as an example, most of the decisions that have been made by consensus the business community constantly wants to revisit. We do, and we end up with the same consensus, but it takes a long, long time.

I, quite frankly, see as a major problem of bipartism the business community's failure to be able to put people in place and give them support. The current practice has been to put people in place and undermine all the decisions they make. So that's one of the failures.

The PLMAC decision, I think, is clear. The record's there. I don't think it's worth commenting on. People made an agreement, and they've tried to back away from it since they've made it.

Mr Mahoney: I would share many of your sentiments about Lynn Williams, by the way. I think he's an outstanding individual who can indeed make an outstanding contribution to this province, and it would be great to have him back. The problem, I'm sure you can understand, is the perception that someone solely and firmly on the side of one of the proponents or one of the stakeholders would chair. I'd be interested to see labour's reaction if George Peaples were announced as the chair of the WCB reform. I think you might have a similar type of reaction to that.

On the PLMAC thing, though, I'd just like to ask if you're aware of this letter—I've asked a number of the business interests if they're aware of it—April 21, 1994, from Premier Bob Rae to Jim Yarrow, chairman of the Employers' Council on Workers' Compensation, in which he says, "Dear Jim,"—I'll read you one section—"A 'purpose clause' will be added to the Workers' Compensation Act which will ensure that the WCB provides its

services in a context of financial responsibility.”

That was the agreement that was entered into in the PLMAC, and I have in fact got right here the comparison of the bill to the agreement. The Premier said there would be something in the purpose clause about financial responsibility; the PLMAC agreement said there would be something in the purpose clause. It's not here. Gord Wilson says this bill mirrors the PLMAC agreement. It clearly doesn't. I just wonder if you have anything to add to that.

Mr Hynd: I haven't seen a copy of the letter that you just read.

Mr Mahoney: You haven't seen it? I'm sorry, what did you say?

Mr Hynd: I haven't seen a copy of the letter that you read from Premier Rae. My colleagues point out to me that in subsection 58(1), “The board of directors shall act in a financially responsible and accountable manner in exercising its powers and performing its duties.”

Mr Mahoney: It's not the purpose clause, though.

Mr Hynd: No, but it's in there.

Mr Mahoney: I acknowledge that, but it's not the purpose clause, which is where the Premier agreed it would go.

The Vice-Chair: On behalf of this committee, I'd like to thank the United Steelworkers of America, District 6, for bringing its presentation to the committee this afternoon.

I'd like to thank all the members for their patience. This committee stands recessed till 2 pm this afternoon.

The committee recessed from 1231 to 1403.

ONTARIO NATURAL GAS ASSOCIATION

The Vice-Chair: I'd like to call this meeting back to order and call forward our first presenters, from the Ontario Natural Gas Association. Good afternoon and welcome to the committee.

Mr Paul Pinnington: Thank you, Mr Chairman. Good afternoon to yourself and the members of this committee. My name is Paul Pinnington. I'm the president of the Ontario Natural Gas Association. Accompanying me, to my left, is Sandy Douglas, the director, employee relations, Consumers Gas Co Ltd. On my immediate right is Jim Chuby, manager of occupational health, Union Gas and chair of the association's WCB committee, and on my very far right is Mr John Neal, a consultant to the association and a principal of Nexus Actuarial Consultants Ltd.

We thank you for including the Ontario Natural Gas Association in these important proceedings. ONGA represents Ontario's \$1-billion natural gas industry. On behalf of our members, we have prepared a discussion paper which addresses serious concerns that we have regarding Bill 165. The paper has been distributed to members of this committee.

Jim Chuby will make our presentation, and with your concurrence, Mr Chairman, I propose that my colleagues and I respond to any questions at the conclusion of Mr Chuby's presentation. The paper has been provided to the clerk and a representative of Hansard. Additional copies

of the paper are available on the desk to my right here for interested parties.

The Vice-Chair: Please proceed.

Mr Jim Chuby: Today our presentation will include an introduction, followed by our specific concerns regarding Bill 165, and conclude with a set of recommendations.

Introduction: Although our time is short, we felt it important to briefly review the WCB's financial crisis and the process undertaken to arrive at Bill 165. This provides the background for our evaluation of Bill 165's ability to achieve the objectives of fair compensation and financial soundness. For your convenience, our written submission also contains a tabular comparison of the October 1993 recommendations of the PLMAC business caucus, the March 5, 1994, principles embedded in the accord between business and labour and the key elements of Bill 165.

In order to illustrate the WCB's financial crisis, it is noted that following the 1984 establishment of the WCB's strategy to achieve a zero unfunded liability by the year 2014, employers' assessments have doubled, the number of WCB employees has increased by 50% and the WCB's unfunded liability has grown from \$2.7 billion to \$11.5 billion, all of this in spite of a 30% reduction in lost-time injuries.

In addition to the above-noted problems, we understand that in 1993 the board had a negative cash flow, in spite of some \$521 million of investment income. Without its investments, the WCB would have had to borrow from the province and/or increase its already unacceptably high assessment rates. Bill 165's proposal to add a \$200-per-month pension will add another \$100 million to this annual shortfall in cash flow.

As we understand the process undertaken to arrive at Bill 165, the Premier initiated the current reform in the spring of 1993 by inviting PLMAC to work together to produce a system that will pay injured workers fairly and meet the test of being financially sound.

The business caucus proceeded to prepare and present their October 1993 set of recommendations that would restore the financial viability of the system without reducing compensation below the fair compensation threshold.

In early March 1994, in response to prompting from the Premier, a short-lived accord was reached between business and labour. Although many of the business caucus recommendations were lost or watered down, we felt that as a take-it-as-it-is package, progress had been made.

By early April, there was no accord and the government had taken over the overall management of the WCB.

On May 18, the government tabled Bill 165. We did not expect the accord to be used selectively in the creation of Bill 165. We did not expect any of the accord's principles to be subjected to major modifications. We did not expect further government intervention in the workplace to be tacked on.

As a result of selectivity, major modifications and add-

ons, Bill 165 fails to tackle the WCB's financial crisis and fails to live up to the intent of the March accord. We believe that the system is already too complex and requires too many resources within the WCB and in the workplace. Bill 165, if adopted, will add to these inefficiencies.

What we all need is a fair, competitive, efficient and effective system to meet the needs of our province's injured workers and employers. We believe that Bill 165 falls short of these requirements. It adds to the system's complexities and need for resources. It imposes undefined and untested requirements on an Ontario workplace that is working hard to remain competitive.

Bill 165's dilution of the Friedland indexing formula and the inclusion of a \$200-per-month lifetime pension will result in a lost opportunity for major financial reform.

Coming to ONGA's specific concerns regarding Bill 165, the purpose clause: We believe that the original PLMAC business caucus purpose clause provided a balance between fair compensation and financial soundness. Without this balance, we believe that the system will continue to dysfunction. The Ontario system is already out of line with those of our trading partners. We support the solutions laid out in the original PLMAC business caucus purpose clause and urge you to consider them carefully. Thoughtful stewardship of our province requires an effective balance of the competing demands for scarce resources. At a time when essential services such as health care are under severe restraint, we question the appropriateness of a one-sided purpose clause for the WCB.

We believe that the removal of the balance between fair compensation and financial soundness from the PLMAC business caucus purpose clause is a major mistake. The result will be a less competitive environment for Ontario employers and a lost opportunity to restore the financial sustainability of injured workers' benefits.

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Return to work section: Bill 165 goes far beyond the March accord. In our opinion, it expands government intervention into the workplace, places further unrealistic demands upon the WCB and subjects employers to multiple penalties for a single infraction.

We do support the concept of prescribing the information required regarding the ability of a worker to return to work and the medical restrictions affecting the worker's ability to perform work.

We do not agree with the requirement for the consent of the worker before this information can be released to the employer, as the information does not relate to diagnosis or treatment.

While the worker's consent should not be required, it is critical that the worker, the worker's physician, the employer and the WCB be provided with this information from the appropriate clinicians in an ongoing and timely fashion.

We agree with the concept included in the PLMAC business caucus proposal that advocates obligations for all

parties involved in an injured worker's rehabilitation and return to work.

Although there may be some value in the use of mediation within workers' compensation, it is important that these services do not increase the WCB's administrative costs. We are concerned that mediation may add to the time it takes to assist a worker to return to work. We are concerned about the proposal's silence on the question of confidentiality and the exclusion of the mediator from any adjudicative or case worker responsibilities. We also have concerns over the mandatory nature of subsection 72.1(1).

Experience rating: ONGA is a strong supporter of the current experience rating systems. These systems have made a significant contribution to the reduction of injuries in Ontario and effective return-to-work programs. They are objective and provide employers with a tool that is consistent with good management practices of any business. To modify these programs with inefficient and subjective WCB employee assessments of an employer's health and safety, vocational rehab and return-to-work practices and programs is inappropriate.

For example, under the WCB's current Workwell program, which includes an audit of an employer's health and safety programs and practices, a staff of 11 is required to complete the assessment of less than 500 employers a year. The WCB's current experience rating program requires a staff of 15 to issue and service 120,000 annual adjustments. It is not surprising therefore that the WCB has stated it does not have the resources to administer the Bill 165 proposed changes to the current experience rating programs. Again, it is not clear why Bill 165 would purport expansion of WCB's administrative costs when the bill's objective was to provide financial soundness.

We urge you not to change a proven system.

Indexing: While we applaud the government's acceptance of a modification to the current indexing formula, we disagree with the need for exemptions. We are particularly concerned that the proposed exemptions include workers who are employed and workers who have retired.

The \$200-per-month increase in pre-1990 pensions: Before proceeding with a further increase in the benefits to some 40,000 permanently disabled workers, we believe that a thorough analysis of the proposal is required. This analysis will provide an opportunity to explain if a further increase in benefits is required for the same group of injured workers who received a major increase under Bill 162. We do not agree with the extension of the increase beyond age 65, when most workers have retired and other government programs become available. We do not agree with the current proposal's failure to limit a worker's entitlement to the limits set out in section 147.

ONGA's recommendations: Our first-choice recommendation is for the withdrawal of Bill 165 and a return to the negotiation table. On the premise that our first choice will not be followed, our second-choice set of recommendations are as follows:

Purpose clause: Adopt the original PLMAC business caucus purpose clause. Failing adoption of the PLMAC

business caucus purpose clause, we recommend the adoption of the accord's purpose clause.

Experience rating: Leave the current experience rating programs unchanged.

Exemptions from indexing: Remove the exemptions from the modified indexing formula. Failing withdrawal, remove employed, employable and retired workers from the exemptions.

The \$200-per-month pensions: Remove the additional \$200-per-month pensions. Failing withdrawal, exclude employed, employable and retired workers from the additional pensions and limit the amount of a worker's additional pension to the limits in section 147.

Penalty for employer failure to cooperate in section 53 vocational rehabilitation services or programs: Remove the penalty.

Mediation: Remove mediation. Failing withdrawal, change the mandatory requirement for mediation and improve the confidentiality and independence of the mediation process.

Medical reports: Remove the requirement for worker consent and prescribe the information from clinicians.

Again, on behalf of ONGA, we would like to thank the standing committee for this opportunity to provide our views on Bill 165. We welcome your questions.

Mr Hope: I guess my questions will be focused more towards Union Gas. It's the one I'm more familiar with.

Reading your presentation, I notice that you didn't put how much money you contribute to WCB, because my second question, if you had put that number there, would have been how much money you get back through the experience rating program.

I know Union Gas in the city of Chatham. I know what they do, and I'm just curious. You talk about the current experience rating program. Just out of curiosity, how much does Union Gas actually get back from the rebates?

Interjection.

Mr Hope: It's okay. Don't bother answering.

Mr Pinnington: Mr Chairman, I just had a question as to whether that was public information or not. I'm not aware that it is or is not.

Mr Chuby: I guess, Randy, just in response to your question, Union Gas and the gas industry, through a lot of work in accident prevention and rehabilitation, have, I believe, the eighth-lowest assessment rate in the province of Ontario. That's because we work hard at it.

Mr Hope: But that's why I wanted to ask the question, why one who is doing a lot of prevention in accidents asks for the removal of the penalties for failure to cooperate in section 53, vocational rehabilitation services and programs; why you're asking that to be withdrawn, when I know the services that you do provide in Union Gas.

Mr Chuby: I see. I feel that's a duplication of what's already in the system under experience rating.

Mr Hope: But wouldn't it get the system under control if we're starting to penalize those employers who are

not participating, whether it's hiring disabled persons or whether it's bringing back the disabled persons from accidents that have occurred? I'm just having a hard time understanding your recommendation you have here, when I know the issue and where you guys are coming from with Union Gas.

Mr Chuby: Again, my response is that I see more benefit of a good experience rating program than a penalty system. In other words, a good experience rating program provides both incentives and disincentives to employer actions in a manner which is consistent with good business practice.

Mr Mahoney: I have a couple of comments. First of all, your opening remarks wherein you say you provide background for your evaluation of Bill 165's ability to achieve the objectives of fair compensation and financial soundness: Financial soundness is clearly not an objective of Bill 165.

The purpose clause lays that out very clearly, notwithstanding the letter that I continue to ask people if they've seen from Premier Bob Rae wherein he promises that a purpose clause will be added which will ensure financial responsibility. That's Bob Rae's letter right there to the chairman of the ECWC, the Employers' Council on Workers' Compensation.

So just by way of correction, I suppose, it's not an objective of Bill 165. It's not addressed in any way. It is an objective stated in the purpose clause to deal with fair compensation and that type of thing.

Also, I would add that your first recommendation of withdrawal and return to the negotiation table is one we've heard often. Your second recommendation is so broad-sweeping that it probably makes the first one more attractive if the government had to choose one. So I highly doubt that they're going to accept either.

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I guess by way of question, on the experience rating, would you rather have a system that eliminated rebates entirely but dealt with the experience rating in setting premiums in the first place, similar to the way auto insurance premiums are established based on a three-, four- or five-star system, so that you would be rated, notwithstanding the problems with new entrants into the system. There would obviously have to be some kind of a base, just like there is with new drivers, to allow for a certain period of time to gain experience. It seems to me odd that we have a system here where we have some \$200 million being given back in rebates, and people crying about premiums being too high in the first place. Why not set the premiums fairly and eliminate this kind of rebate thing?

Mr Chuby: In response to that, our experience with experience rating has been that it's more responsive than the assessment rating system. In fact, we worked hard to become one of the groups that was allowed into experience rating in about 1986. We gained entrance in 1988 and we're one of the groups subjected to the sunset clause which, after evaluation, showed that experience rating did in fact work.

What you're referring to in your question is prospec-

tive rating versus retrospective rating, and that was a component of the experience rating system initially. On a long-term basis, it may be a more appropriate way to go, but it doesn't give you the flexibility to say, "Yes, this is your response," and it doesn't give you the accountability to manage well. The current NEER program gives you the ability to say cause and effect and a financial consequence.

Mr Arnott: On the purpose clause, one question: Of course, the purpose clause explains why we have a Workers' Compensation Act and what its fundamental guiding principles are going to be, and as such, it's a very important clause. Mr Mahoney has a letter the Premier wrote to an individual—

Mr Mahoney: Do you want a copy?

Mr Arnott: I haven't got a copy of it but I wouldn't mind—apparently making the commitment that there would be within the purpose clause a requirement that the board would act responsibly in a financial sense.

The Premier made the announcement that he was going to make some changes to the Workers' Compensation Act. He told the Legislature on April 14 that some changes were coming. It was at that time that we were told that Mr Di Santo would be gone and Mr King would be gone, and a number of changes would be taking place.

I received in my office a news release. It comes from the Ministry of Labour but it talks about what the Premier said as well as the statement that the Premier made, and then a technical summary of workers' compensation reform. Again, this is dated April 1994 and it says:

"Program for Change: The government is adopting the following key elements of the PLMAC framework agreement: a new bipartite structure for governing the Workers' Compensation Board of directors; and two, a legislated purpose clause setting out the guiding principles of (a) fair compensation and benefits, (b) rehabilitation and early and safe return to work opportunities for workers, and (c) financial responsibility and accountability."

When I received this—I assume it's coming from the Premier—the Premier's telling me that there's going to be a requirement within the purpose clause for financial responsibility and accountability. Now that's not there, as we found. Why do you think the New Democrats have reneged on this promise?

Mr Chuby: I guess it seems kind of a political question. I'm not sure how to address that. All I can tell you is that in our table on page 6, we lay out the purpose clause that was originally put forward by the business caucus and then the business clause that was agreed to in the brief accord, and then showed, I guess, the similar or same sections in the proposed Bill 165.

As you can see, it's been a continual—I refer to it as watering down to the point where I question that the intent of keeping a balance between fair compensation and financial soundness, which were the objectives, as I understand it, when the PLMAC first got together, still exists under Bill 165, and that's our concern.

The Vice-Chair: On behalf of this committee I'd like to thank the Ontario Natural Gas Association for its presentation to the committee this afternoon.

ONTARIO SOCIAL SAFETY NETWORK

The Vice-Chair: I'd like to call forward our next presenters from the Ontario Social Safety NetWork. Good afternoon and welcome to the committee.

Mr Randy Ellsworth: My name is Randy Ellsworth and I'm from the Ontario Social Safety NetWork.

Just a couple of preliminary comments before I start: One is, I'd like to voice my objection to the short period of time that people are allowed to present to this committee. I think the bill that you're considering and the act that you're considering is a fairly important one and the limit in time is not fair to the people who are interested in both the bill and the presentations.

By way of introduction, I'd like to say that the Ontario Social Safety NetWork is a provincial organization which was formed to fight attacks on social programs that make up our social safety net and to support progressive policy change. The network includes low-income individuals, anti-poverty groups, interfaith communities, people with disabilities, labour groups, legal clinics, social development agencies and others.

One further caveat to the submission before I start, as I've noted, the network has a diverse membership and some of its member organizations have made presentations to the standing committee in their individual capacity. Where this is the case, the standing committee should rely on those submissions as reflecting the viewpoint of the individual organization rather than our submission here.

The purpose of our submission today is twofold. The Social Safety NetWork recognizes that many of the social programs in this country, including this province, are under some form of review. Social assistance, or what's left of the social assistance reform process, is still going on. Unemployment insurance and the federal social security review is occurring along with the royal commission into workers' compensation.

We recognize that many of the issues that face recipients in all of these programs are similar and cross-programs, so what we're going to attempt to do in our submission today is both focus on the workers' compensation issue specifically, but also attempt, at least, to highlight some of the overlap and the interaction with different programs.

The first thing I'd like to touch on is the \$200 increase, which is in section 32 of Bill 165. I'm sure you're familiar with all the sections and what they stand for, so I'll try to be brief in what they mean.

When the Premier introduced the legislation, he stated that the \$200 increase was going to be to the lifetime pensions of injured workers and was going to not be subject to the social assistance clawback. Bill 165, as it reads right now, doesn't achieve any of those purposes. In so far as pensions are concerned, the \$200 amount is contingent upon an injured worker being entitled to a supplement on his or her permanent disability pension. In effect, this is really a second supplement to the injured worker's pension.

Our recommendation is that the section should be amended to delete the subsection referring to entitlement

to supplements, and that instead the \$200 would be paid to workers receiving an amount awarded for permanent partial disability.

The second issue concerning the \$200 is the social assistance clawback. Unfortunately, this has not been mentioned by anybody as far as I can tell, by either the deputy minister or the Minister of Labour in their opening remarks to the committee. It hasn't been mentioned since April 14 when the Premier made his speech.

As the bill is presently worded, any worker who receives the \$200 and who is also receiving social assistance will have that amount deducted dollar for dollar from their social assistance payment. They will, in fact, be no better off now or after the bill is passed than they would be now.

The only way to ensure that this amount is not deducted from the social assistance payments is by amending Bill 165 to make a specific reference to these \$200 payments not being included in income for the purposes of the Family Benefits Act and the General Welfare Assistance Act.

The second thing I'd like to talk about, just briefly, is the membership of the board of directors, which is section 11 of Bill 165. This bill creates a new composition for the board. Unfortunately, there are no spots reserved specifically for injured workers.

I find it difficult to believe that this government, or any government, would set up a commission on something like racism without ensuring that there were members of the visible minority communities as commissioners on that commission, or that it would set up a commission on sex discrimination without ensuring that there were women as commissioners on that commission, and yet that's precisely what it's done in so far as injured workers and the Workers' Compensation Act are concerned.

We believe that the injured worker should receive the same consideration. The exercise of the board of directors' power directly affects them and only them, or mostly them, and they should have specific spots reserved for them on the board. We don't believe it's sufficient to say that there are spots reserved for workers because, as I'm sure you are aware, the debate around Bill 165 has indicated that workers per se and injured workers do not necessarily have the same outlook on issues.

1430

The third thing I'm going to talk about is the obligation of the board of directors, which is contained in section 12 of Bill 165. That section says that the board is to "act in a financially responsible and accountable manner." However, there has been no explanation of what this "financially responsible and accountable manner" means. We believe that there's already sufficient guidance in the act for the purposes of carrying out the board's financial responsibilities and our concern is that this section is going to be used to reduce coverage or prevent coverage from being extended to workers who are injured at work. If this is the case, we believe that this would be a reneging on the historic agreement that was reached when the legislation was first passed.

Workers gave up their right to sue in exchange for no-fault compensation for their workplace injuries.

The effect of this section, if it is as we've suggested, is that workers who are injured in the workplace would not receive any compensation because employers might complain that they can no longer afford to pay for injuries which they have caused. So our recommendation for this section is that it should be deleted.

The fourth thing I'm going to talk about is the purpose clause, section 1 of Bill 165, and that states that one of the purposes of the act is to provide "fair compensation" to workers who are injured in the workplace. As yet, I've seen no one who's defined what "fair compensation" means, and we're wondering whether it means anything less than full compensation. If it does mean less than full compensation, this would also appear to be reneging on that historic agreement. Workers gave up a common-law right to sue in return for compensation. There does not appear to be any corresponding encroachment on the employer's full immunity from legal action for workplace injuries. So our recommendation is that this section should be amended to refer to full compensation.

The fifth thing I'd like to touch on is what I've entitled Compensation from Another Jurisdiction. This is section 3 of Bill 165. In his opening remarks, the deputy minister stated that this section was meant to prevent double recovery of workers' compensation payments from two jurisdictions. Unfortunately, this section, as it's worded, is much broader than this. This section would arguably prohibit payment of workers' compensation benefits to persons who are receiving CPP disability benefits, where some portion, no matter how small, of that CPP payment takes into account the workplace injury.

As you'll see in our brief, there's a reference to a Supreme Court of Canada case which has in fact interpreted the words "in respect of" as the widest of any expression intended to convey some connection between two related subject matters. This argument on how that section could be used to prohibit payments to people who are receiving CPP disability benefits is somewhat more fully explained in the brief. So our recommendation is that section 3 should be amended to make reference to workers who receive compensation under the workers' compensation law of another jurisdiction for the same accident.

The last thing I'd like to touch on is what's been called the Friedland formula, which is in section 33 of Bill 165. The formula proposed in the bill means that workers' compensation benefits will not have full protection from inflation, and I'm sure you're all familiar with the formula. The indexing factor that's used to index benefits is three quarters of the change in the consumer price index minus 1%. The bill also says that the indexing factor will be no greater than 4%.

This is not what the Friedland task force proposed as its formula for indexing pensions. One of the things that the Friedland task force said was that the annual increase in the CPI—the A in that formula—the highest that this amount should be is 10%. With the cap that's proposed in Bill 165 to the indexing formula, the highest that this A can be is 6.7%, so that injured workers will receive no

protection against inflation, which is higher than 6.7%.

The second thing that Friedland recommended and that isn't in the Bill 165 formula is that the inflation in excess of 10% should be carried forward to years in which inflation was less than 10%. This would ensure that inflationary gains were eventually recaptured by people who receive pensions.

Finally, the true Friedland formula was posited as a minimum for the indexation of pensions, not as a maximum, and it was recognized that it would not fully protect against the erosion of benefits associated with inflation.

The formula that's presently in Bill 165 creates the illusion of an increase in benefits because the face value of the benefit increases, but the purchasing power, or the real value of the benefit, decreases over time. What is being proposed is a legislated annual reduction in the real value of workers' compensation benefits which the government or the WCB does not have to account for publicly. Our position is that all benefits should be indexed fully to inflation.

I'd like to thank you for listening and I'm willing to entertain any questions that you might have.

Mr Mahoney: Actually, I think you've highlighted a major part of the debate around this that I saw when I went out on an outreach tour and I've seen in other—how many times do we sit around here and deal with tinkering with WCB? Do you see the compensation system as a social service or an insurance plan?

Mr Ellsworth: I guess I'd have to ask you to define social service and insurance plan.

Mr Mahoney: Well, let me do that. When Meredith looked at it he said that one of the problems with other compensation systems that he looked at was that there was still the litigation. They were trying to pin blame, so there were systems where they were trying to blame the worker for causing the accident or they were trying to blame the employer for causing the accident, and the only solution to that was to litigate, was to actually go to court. It was his recommendation that the litigation aspects under this system be eliminated, for the benefit of both workers and employers.

In return for that, and in return for the workers giving up the inherent right to sue, and in return for eliminating all the costs and delays in litigation for a worker to get any kind of settlement to help the family etc etc, there was supposed to be insurance to replace the income and to provide health care benefits to rehabilitate the worker and help that worker return to work. So it was income replacement insurance, a form of health insurance separate from the broader health insurance that we enjoy with OHIP, and rehabilitation insurance.

Social services, in my experience, is something that is not related to an injury, is not related to an accident of some kind. It's simply related to the fact that you're out of work, you've run out of UI benefits, you can't get a job and you're on some form of family assistance. So I sort of see a difference.

I think the concern we've heard from a number of people, primarily in the business community, is the WCB

system has become more of a social safety net than it has an insurance program to replace income, rehabilitate and get a worker back to work. I just wonder if you agree with that.

Mr Ellsworth: I guess what I would say is that the people who I work for and with really don't care whether something is an insurance system or a social services system or whatever. I don't agree with your premise that social services don't cover people who are injured at work because people who are refused coverage or aren't covered under workers' compensation, and yet are unable to work, are in many cases, forced to rely on social assistance.

I think, instead of trying to categorize something as an insurance system or a social service system, what we should be looking at is making sure that we compensate people for injuries that they've suffered.

Mr Arnott: Thank you for your presentation. I have a question about the bipartite nature of the board that this bill will create. It appears to me that if we go through this process and have a bipartite board where you make appointments, where individuals are supposedly in theory representing a specific interest, i.e. either labour or business, that those board appointees are going to feel predisposed towards pushing a specific agenda once they get on the board. To me, you can almost draw a comparison, it's almost like bringing party politics into the Workers' Compensation Board, in my opinion.

Do you not think it would be better to appoint members of the board who are completely objective, completely fairminded, people without bias or preconceived bias?

Mr Ellsworth: I don't have any trouble with the concept. Our suggestion about ensuring that injured workers are represented on the board is that everybody also brings their personal life experience to their objectivity, and you and I might not have the same outlook on things as somebody who has suffered a workplace injury. And right now, as Bill 165 proposes that the board should be structured, there is no guarantee that this outlook will be heard at the board.

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Mr Arnott: I'm just saying a labour appointee is going to be given his marching orders, "You go in there and fight for labour," and a business appointee, so-called, is going to be given the marching orders, "You go in there and fight for business," and create a situation where on many occasions we're going to have the whole board at loggerheads, I think.

Mr Ellsworth: I'm not sure if there is a question there, though.

Mr Arnott: It's a comment.

Mr Ellsworth: Oh, okay.

Mr Arnott: You answered my question. Thank you.

Ms Murdock: Thank you for your presentation. Social assistance clawback: I have said, and you've referred to the fact, that it would be in a regulatory form under Comsoc regulations. From your second paragraph on that section, that's not good enough, according to you.

Mr Ellsworth: Yes. Do you want me to elaborate on this?

Ms Murdock: Yes. I do.

Mr Ellsworth: I have heard from people at Comsoc that they are insisting that they will ensure that this \$200 is not flowed through to the government coffers. But the difficulty is, there are two things, and I don't want to get too legalistic, but in interpreting statutes there's one principle that says an act of the Legislature overrules a regulation in all cases, because acts are higher pieces of legislation. That's why we suggest the protection for that money be in this act and not in the regulations under the Family Benefits Act and General Welfare Assistance Act.

The second reason we don't want to see that is that I've had and people in our organization have had a long history of the amendments to regulations under the Family Benefits Act and the General Welfare Assistance Act not doing what they intend to do, for one thing, and subsequently being repealed or amended to do something else with no consideration for such things as this \$200. A regulation can be changed overnight. The cabinet can get together and decide they're going to change the regulation. This act cannot be changed overnight. If the protection is in the act, the protection is in the act and it can only be removed by the Legislature.

Ms Murdock: There's a problem, I think, at this point under Bill 165, because if a section under a bill has not been opened, you cannot open it without unanimous consent of all three parties in order to change that. So any reference now to either general welfare assistance or the Family Benefits Act would require unanimous consent, and I don't know whether or not we'd get it.

Mr Ellsworth: To include the income protection in either one of those two acts?

Ms Murdock: Yes, because it isn't in Bill 165, as you've pointed out.

Mr Ellsworth: Well, the way the Family Benefits Act and the General Welfare Assistance Act are structured, there is no reference to income in either one of them. The reference to income is in the regulations.

Ms Murdock: Yes, it is regulatory, and we have got an agreement from Tony Silipo, the minister, that it will definitely not be clawed back.

Mr Ellsworth: I don't disagree with that. I'm just suggesting that Mr Silipo might not be the minister for the rest of his life.

Ms Murdock: I know what you're saying. That's true.

The Vice-Chair: On behalf of this committee, I'd like to thank the Ontario Social Safety Network for giving us their presentation this afternoon.

CANADIAN AUTO WORKERS

The Vice-Chair: I'd like to call forward our next presenters, from the Canadian Auto Workers, national office. Good afternoon and welcome to the committee.

Mr Jim O'Neil: First of all, I'd like to thank the committee for giving us an opportunity to make this presentation. My name is Jim O'Neil. I'm the national secretary-treasurer of the CAW. With me is Kathy

Walker, who is the director of our health and safety, WCB and environment department, and Mickey Bertrand, who is one of our staff members, who works every day on WCB and with injured workers. Both Kathy and Mickey are totally familiar with WCB as it is and as it's being proposed.

Our union represents well over 130,000 men and women in the province of Ontario, and we think, as the bill that's coming forward here today has a lot of shortcomings, what we'd like to do is, one, we have a summary of our concerns, and those who have a copy of the presentation we're about to make will see in the middle it's detailed section by section. I would now ask Mickey Bertrand to go through our summary.

Mr Mickey Bertrand: As the largest private sector union in Canada, with a long and proud tradition of fighting for workers' rights in the workers' compensation area, we are pleased to address you this afternoon.

Within Bill 165, there are two new major areas with which we have fundamental disagreement: (1) the proposal to erode indexing of pensions and benefits and (2) the proposal to require the new board of directors to be fiscally responsible and accountable.

The proposal to erode the indexing of pensions and benefits will take money directly out of the pockets of injured workers. The new obligation on the leadership of the board will be used as an excuse to erode present entitlement and reduce opportunities to correct past policy errors, such as the undercompensation of occupational diseases.

These assaults on the workers' compensation system have been led by employers complaining vehemently about the unfunded liability, just as they use the federal deficit as an excuse to cut social programs. These arguments are wrong. The government should dismiss them. The Ontario Workers' Compensation Board is in better financial shape today than it was in 1983 even though significant improvements, including indexing, were made in 1985.

If the employers were genuine in their concerns about the integrity of the workers' compensation system, they would do two things. The first is that they would support increases in the assessment rate to recoup past losses which occurred during times when the assessment rate was far too low to meet future pension obligations. The second is that they would vigorously support enforcement of health and safety laws by the Ontario Ministry of Labour and the training obligations mandated by the Workplace Health and Safety Agency. The first would raise sufficient moneys to meet current obligations and slowly erode the unfunded liability. The second would reduce the occurrence of injuries and occupational disease.

Purposes: We support the proposed purposes to the act.

Subsection 1(1): We support the change of the term "industrial disease" to "occupational disease" both here and in later sections.

Subsection (7.1): We recommend that the proposal be deleted. We are concerned that this proposal might prohibit cost-sharing agreements among boards, thus forfeit-

ing entitlement to workers, eg, workers with occupational diseases who might have had exposure in several provinces.

Section 43: We recommend that section 43 be amended to prohibit the practice of deeming. Phantom jobs should not be deducted from a worker's future earnings loss calculation.

Section 51: We recommend that this proposal be deleted. Workers should have the right to privacy. Employers should not have the right to demand and receive medical information about workers. For the board to pay for such medical information means there is no downside for the employer to make such a demand. At a minimum, we recommend the word "informed" be added before the word "consent."

Section 53: We recommend the proposals to add employers to the board's vocational rehabilitation processes be deleted. It is workers who require rehabilitation, not employers. Employers have obligations to provide voc rehab under section 54 to assist injured workers. The board's role is to insist they fulfil their obligations.

We recommend that the proposed change to subsection (12) be deleted. The board presently is required to assist the worker to search for employment for a period of up to six months after the worker is available for employment. We oppose the proposal to change "shall" to "may," making the board assistance optional.

Section 56: We support the change to the governance structure of the board. The board of directors' structure is copied from the BC act and was introduced during the last Social Credit government. It works well there.

Section 58: Given that the proposal for the new board of directors was a direct copy from the BC statute, we would have assumed that the obligations of the board of directors would have also been copied from the BC law. Unfortunately, the Ontario board of directors will be constrained by a new and insidious obligation.

We are completely opposed to the proposal in subsection (1) requiring the board of directors to act "in a financially responsible and accountable manner in exercising its powers and performing its duties." This new concept stands the statute on its head.

Workers' compensation is an insurance system. Employers are obligated to purchase this insurance to provide benefits to injured workers so that employers are immune from civil suit. The current section 4 of the statute is clear. The board has a statutory obligation to provide benefits to workers who are injured by accidents which arise out of and in the course of their employment. The benefits must be paid first, then the board must raise sufficient moneys to pay for them. This is what the law says at present. To change the law to require fiscal considerations first subverts section 4 and the proposed purpose clause.

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The undercompensation of occupational disease claims in the province of Ontario was noted by the policy adviser, Professor Paul Weiler, to the then Conservative government in 1983. He said that "the Ontario board compensates only a tiny fraction of them," work-related

lung cancer deaths. This wrong will never be righted as long as the new board of directors looks at financial considerations first.

Subsection 63(2): We are opposed to the proposed subsection 63(2) for the same reasons we are opposed to the proposed subsection 51(2). If, however, subsection 51(2) becomes law, then we recommend that the form provide as little medical information as possible.

Clause 65(3)(h): We recommend that this proposed addition be deleted. There is far more undercompensation of injured workers than overcompensation. At a minimum, we recommend that clause 65(3)(h) be amended to add the phrase "and addressing any undercompensation of benefits provided under this act."

Subsection 65(3.1): We support this proposal.

Section 65.1: We are opposed to this proposal. Even at present, the workers' compensation system is supposed to be at arm's length from the government. The new board of directors re-emphasizes this point.

Section 65.2: We oppose this proposal for the same reasons as section 65.1.

Subsection 69(2): We support this proposal.

Subsection 72(1.1) and section 72.1: We are not opposed to the idea of mediation, but we are wary of it. Any mediation must not be used in a manner which erodes present rights of appeal.

Subsections 76(3) and (4): We support this proposal.

Section 88: We think this proposal is probably fine.

Subsection 95(1): We support the proposal for a change of name.

Subsection 95(6): We do not support the proposed change, which would bring the Occupational Disease Standards Panel under the direct control of the board. The offices of the worker adviser and employer adviser remain at arm's length from the board, with their funds received from the ministry, then reimbursed by the board; so should the ODSP.

Subsection 95(8): We recommend a new subsection be added which would read:

"(e) to make decisions about descriptions of disease and process in schedules 3 and 4 which shall become regulations by order of the Lieutenant Governor in Council within two months of the decision."

Duplication and waste should be eliminated. The ODSP should make decisions about the occupational disease schedules and the board should implement them.

Subsections 96(5) and 97(4): We support the proposed change.

Section 103: We wholeheartedly support this proposed change. Penalty assessments on employers enable the board to modify employer behaviour to ensure sound efforts are made in the area of voc rehabilitation.

Section 103.1: We support the proposed change to the experience rating system. The present employer hysteria over the workers' compensation system is led by a private army of employer consultants who feed off the adversarial system generated by the present experience rating system. The proposed change would require the

board to consider employer efforts in the prevention and vocational rehabilitation areas first. Past claims cost experience would be an optional consideration.

We read in the media that the Minister of Labour has bowed to the employer opposition to changing the experience rating. We sincerely hope this is not the case. It is the most significant proposal which, if implemented correctly, may reduce the present conflicts in the system.

We further recommend that the board abolish experience rating and use a flat rate assessment system, which would dramatically reduce administrative costs.

Subsection 103(4), penalty assessments: We recommend that the current subsection 103(4) be used in the same manner as penalty assessments are imposed in the province of British Columbia. The prevention division of the BC WCB, the equivalent of the Ontario Ministry of Labour's occupational health and safety division, directs the WCB assessment department to impose a financial penalty on an employer who violates a health and safety regulation. This system has been used in BC to good effect to enforce health and safety laws for more than 20 years. The Ontario Ministry of Labour inspectors need the additional clout that a penalty assessment system would give them.

Subsection 117(3): We support the deletion of this section if it is considered redundant.

Subsection 137(4): We represent workers who are employed by both schedule 1 and schedule 2 employers. We support this proposal that these employers should follow the same rules.

Subsection 147(14): We wholeheartedly support the \$200 increase for pre-Bill 162 pensioners. Many of these permanently injured workers are existing on extremely small board pensions. Their lives will improve as a result of this increase.

Since we are concerned that entitlement to a supplement is increasingly difficult to get, we recommend that a new clause be added:

"(c) If the worker makes application to the board and is determined to be receiving an inadequate permanent partial disability award."

Clause (b) would need to be amended to add the word "or."

Let me just divert from the presentation for a minute, if I may. As much as we support this section of the act and the people who are going to get the \$200 increase to their PD awards, we do see a problem in this area. We see a lot of injured workers who are going to fall between the cracks and are not going to be in receipt of this \$200 who desperately need it.

These are people who did not qualify for the subsection 147(4) supplement as a result, for example, of being cut off during the voc rehab process, being deemed to be uncooperative. We see a number of people who have insufficient pre-1990 pension awards who don't get the supplement under 147(4) and so, perspectively speaking, are already behind the other PD awards by approximately \$390.

The people who are getting the 147(4) are now going to get the \$200 increase; a number of people who don't

get the 147(4) are going to be left out in the cold. We see that as a problem.

Sections 101 and subsections 102(1) and 132(2): These sections deal with the obligation of the board to fund future obligations. The employers make much ado about the present unfunded liability of \$11 billion. Is it a problem? Not when the board has capitalized reserves of \$6 billion.

In 1980, the Ontario board was about half funded. Professor Weiler was not concerned about the unfunded liability. He had this to say in his first report to the then Conservative government:

"This does not pose a threat to the fiscal soundness of the program. It simply means that the board must use its power to levy assessments in later years to meet future liabilities on a pay-as-you-go basis. The main virtue of this policy is that the Workers' Compensation Board does not drain out of the private sector massive amounts of capital (amounting at this time to another \$2 billion which would be needed for full funding of current liabilities.)"

Subsection 102(1) gives the board discretion not to fully fund future obligations. We see no reason to set aside more than a couple of years of current costs, as is the case with the Canada pension plan.

The issue of coverage, section 139, is an important one. Most Canadian boards, including the next-largest province, Quebec, cover everyone in the province. At the beginning of this year, BC was the latest province to extend coverage to all workers and employers in the province.

We recommend that the provisions of section 139 be deleted and replaced with a requirement that all employers and all workers in the province of Ontario be covered by workers' compensation.

Subsection 148(1): The statute presently requires that all dollar amounts in the act, average earnings and pensions be fully indexed to increases in the consumer price index. This COLA clause was hard won by struggles of the union movement, injured workers' groups and the support of the New Democratic Party. We made submissions, we lobbied politicians, we demonstrated at Queen's Park, we appeared on television and we were heard on radio and articles appeared in the newspapers and magazines. After decades of lobbying, we finally won full indexing in 1985.

The Friedland formula proposes to erode pension indexing drastically. What is the cost saving to the board of the Friedland formula? Well, we have heard figures from \$13 billion to \$27 billion over a specific period of time. Whatever the figure, it is a large amount of money. Whatever the figure, it'll come directly out of the pockets of injured workers.

There are some exceptions to the erosion of indexing which make the proposed change appear less draconian, but the reality is that only some pensioners will be protected by these exemptions. Most would not.

We recommend that the Friedland formula be scrapped and that the present full indexing formula of subsection 148(1) be retained.

Royal commission/universal disability: We are pleased to see that the appointment of a royal commission is imminent. Those affected by the workers' compensation system must have full opportunity to comment. The commission's recommendations must be given the serious consideration they deserve.

As well, we emphasize that the scope of the commission must be broad enough to ensure that a universal disability system is thoroughly examined. We strongly believe that a universal disability system would be a dramatic improvement over the present patchwork of disability compensation schemes, of which workers' compensation is only one.

Thank you for your consideration of this submission respectfully submitted by CAW Canada. Might I just add that on the following pages you'll see a more in-depth analysis of Bill 165. We condensed it for the purposes of our presentation.

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Mr Arnott: You say that you have a fundamental disagreement with two aspects of the bill. Are your fundamental disagreements such that you would recommend that the bill be withdrawn?

Mr Bertrand: No, that is not our position at all. We look at the bill in respect to the sections and subsections that it's laid out in. There are certain areas of the bill that we definitely agree with, but there are certain areas of the bill that we definitely disagree with. We take the liberty and we take the right that we have the ability to cherry-pick, as some people have put it, and determine which areas we support and which areas we don't.

Mr Len Wood (Cochrane North): I find it an interesting comment that you have here, saying that the employers in the United States pay a lot higher premiums under private insurance or whatever, and yet the workers get a lot less than in Ontario. I just want to know if you want to comment on that. It's part of your universal plan that you're talking about, disability.

Ms Kathy Walker: The reality in the United States is that because of private insurance systems, you have various competing insurance companies that are providing a much lower benefit level. They're required to provide a certain benefit level by statute, but in practice employers are paying far higher premiums throughout the United States and workers are receiving far lower benefits.

Mr Wood: So we're better off in Ontario?

Ms Walker: We're much better off in any province in Canada.

Mr Mahoney: In a very comprehensive brief you've recommended 16 fairly major changes to the bill. The bill has been referred to by me and others as the social contract for injured workers. Buzz Hargrove left the PLMAC process over the social contract. It reduces benefits to injured workers and yet you say you cherry-pick to support the bill. You've got to help me. I just don't see the logic of how you can support this bill after you have enunciated the concerns so well.

Mr Bertrand: Sorry, you must have misunderstood me. I didn't say that I support the bill. I said what we've

done is we've supported certain elements of the bill. We've reserved the right to cherry-pick under certain elements of the bill that we do support and identify the areas that we are opposed to.

Mr Mahoney: You don't have what you want but you still support the bill.

The Vice-Chair: On behalf of this committee I'd like to thank the Canadian Auto Workers national office for its presentation to the committee this afternoon.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Vice-Chair: I'd like to call forward our next presenters from the Ontario Public Service Employees Union. Good afternoon and welcome to the committee.

Ms Heather Gavin: My name is Heather Gavin and I am the coordinator of the membership benefits department at OPSEU. I have here with me today two of the officers who work with me in the department, Marsha Gillespie and Diana Clarke.

I would like to thank the committee for hearing our submissions on this issue today. You have heard from us across the province on various issues as they relate to Bill 165. Today we're narrowing our scope again to specific areas of the bill and the workers' compensation system in Ontario. OPSEU has recently taken the opportunity to review the available WCB financial information. Our submissions today will attempt to address the real financial situation at the board and the solutions that we find are necessary.

In recent years we have heard a lot about the Workers' Compensation Board's growing unfunded liability, which is presently estimated at \$11.5 billion. We have heard over and over again that employers claim that the solution is to cut the injured workers' benefits, while injured workers, many of whom live in poverty already, not surprisingly are opposed to this suggestion. At the same time, employers vocally resist any increase in their assessment rates and have been successful for over two decades in keeping their actual payroll assessment rates below the target assessment rates.

In order to go through this, we think it would be useful if we start off with a basic "What is an Assessment Rate?" course here, assessment rates 101 course, and explain the basic makeup of the WCB funding.

The target assessment rate is a rate which is set each year by the Workers' Compensation Board actuary. It takes three component pieces into account:

(1) The expected benefit costs for the new claims in the next year;

(2) The overhead, and this would include the components of the share of the WCB's administrative expenses, the accident prevention costs and other statutory obligations for the next year; and

(3) The unfunded liability. This component would have the share of the charge towards retiring the WCB's unfunded liability in keeping with the WCB's strategy that it be fully funded by the year 2014.

In other words, the target assessment rate is the rate necessary to pay the current costs, the overhead costs and eliminate the past debt. At the back of the proposal we

have given to you what have been the proposed target assessment rates under table 1. It won't be the first table you run into; that's table 2. If you go to the one behind it, that will be table 1.

If I could just walk you briefly through what this table shows from 1984 to 1994, this would be what the board actuary has set; these should be the target assessment rates for those particular years. The black line shows that this would be the claims cost that they would have to fund for, the grey shadowed area is the overheads which had those component parts and the top part is the unfunded liability payments. This would not be in order to retire the full amount of the unfunded liability, but this would be a portion that would be required to pay for the unfunded liability.

One of the interesting things I'd like to point out to you on this chart is that from 1991 onward, the new claims costs are decreasing. It should be kept in mind that the past debt, or the unfunded liability, will only be eliminated by the year 2014 if the full amount of the unfunded liability assigned to each year is paid in full. It should also be noted that the board actuary, in setting the target rates, takes into consideration the past claims experience and the assessable payroll costs.

But what actually happens? The Workers' Compensation Board then considers a variety of other economic factors. As a result, the target rate set by the board actuary does not actually get used in determining the WCB premiums to be paid by the employers. Instead, the actual assessment rates are used to determine the WCB premiums paid by the employers. These actual assessment rates have always been set below the target assessment rates.

For that I'd like you to turn to table 2. Indeed, what we've done here is to take what would have been posed as the target assessment rates of the employers, in order to address the issue of all of the component pieces as to what the rates should be, and have actually imposed upon that the black line, which is the actual assessment rate. If you take a look at that, anything that would be above that black line would be the amount which was not funded in that year. I draw your attention to one of the aberrations, actually, where in 1986 you didn't even cover the cost of the overhead.

In the early years, the actual annual assessment rate was typically set at an amount that would cover only a part of the unfunded liability costs attributed to that year, but would fully cover the overhead and new claims costs. The result of this was that the unfunded liability grew from 1984 to 1992 by \$2.5 billion from this cause alone. However, if this money had been received and invested, in today's dollars it would have grown to over \$4 billion. That is based with just conservative assessments alone.

In recent years, the actual assessment rate has been kept so low that it is now no longer sufficient to cover fully the operating costs. As a result of this, the board has had to remove the money from the board's investment fund to pay for the operating costs in the following amounts. These have been extrapolated from the board's financial statements from the years 1991 to 1994. You can see that there has been an aggregate amount of \$1.4

billion removed from the accident fund in order to cover the costs of the board.

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Consequently, in addition to the unfunded liability problem, there is also a cash flow problem. This problem would be worse, except that the benefit costs, as I have pointed out earlier, have been declining faster than the assessment revenues.

Another component factor and another factor that has to be taken into consideration on the unfunded liability is, how do mortality figures or the tables that are used figure into the unfunded liability? Since 1986, the WCB has used mortality tables that have not reflected the actual experience for injured workers receiving pensions. In 1992, the board management moved to make appropriate provisions in its 1992 valuation. This has represented an increased cost—or in valuation terms it would show us a loss—of approximately \$500 million to date.

The effect of not updating the mortality tables is that the cost estimates used in determining the target assessment rates are kept at an artificially lower level, translating into a lower actual assessment rate being set for employers.

Further, if we delve into what are the component pieces of unfunded liability, how does the experience rating figure into unfunded liability? Experience rating has been in place at the WCB since 1984 without any quantitative or qualitative study to suggest that it's an appropriate method of reducing accidents among the employer groups.

In addition, experience rating programs were designed to redistribute higher assessment costs to employers who have historically generated more claims and lower assessment costs to employers with fewer accident claims. By allowing for rebates and surcharges, assessment rates were to be revenue-neutral on an aggregate basis. This, however, has not been the case. Refunds and surcharges have not balanced themselves out and in fact the net cost has been close to \$500 million to date. We have in the brief, if you'll note, \$5 million. That's a typographical error. There should be two zeros on the end of that.

The basic premises of just those few component pieces are, what does it add up to and what does it show as the causes of the growth in the unfunded liability? If you put all of the component pieces that we were talking about earlier into place, you can see that the total of \$6.4 billion of the unfunded liability can in fact be shown to have been produced just alone from those few areas which we have addressed. All of this is within a strategy in which full funding is supposed to be attainable by the year 2014.

In 1984, the unfunded liability was approximately \$2 billion. It was the Wyatt Co report to the Ministry of Labour on the underlying financial situation of the WCB that led to the 1984 financial strategy that the WCB has included with some of the following elements:

(1) The amortization of the outstanding unfunded liability over a 30-year period;

(2) Full funding, ie, that the actual assessment rates would be adjusted to meet the target assessment rates.

While attention continues to be fixed on the year 2014, what gets overlooked is that the actual assessment rates have never reached the target assessment rates that we have shown you in table 2, and also that in the interests of the rate stabilization, an initial three-year phase-in period, with limits on maximum rate increases and decreases, was part of the 1984 financial strategy, thereby putting the payback plan behind from the beginning.

Disturbingly, this trend continues today, as can be seen when one considers the new employer classification structures introduced effective January 1, 1993. This has increased the assessments rates for some employers, but the WCB has put in transitional rules to cushion the immediate effect of these changes. While it may provide temporary relief for some employers, it also contributes to the unfunded liability and the cash flow problems. Full funding by the year 2014 would have been attainable had the target assessment rates determined by the actuary been matched by the actual assessment rates for the full 30-year period, but they didn't.

The basic question that has to be asked is, what is the magic of 2014? While there are sound reasons for being securely funded, there is no legal requirement to be fully funded or to do so by the year 2014. In fact, what should be addressed is, what is a reasonable time period in which to build a reasonable reserve targeted to dealing with the unfunded liability and providing for stable funding in the future?

If in 1984 the year 2004 had been chosen instead of the year 2014, the target assessment rate would have had to be higher and, conversely, if the year 2024 had been chosen, then the target assessment rate could have been lower. The point is that as long as the unfunded liability is decreasing at a reasonable rate and the assessment rates are not increasing at an unreasonable rate, it doesn't matter how long it takes.

One solution that is commonly heard from employer groups is to address the unfunded liability by reducing benefit levels to injured workers. However, it's not the benefit costs that are out of control; it's the unfunded liability that is out of control. The number of lost-time injuries is decreasing, as is the net increase in the benefit liabilities in the post-Bill 162 years. Despite these reductions, the unfunded liability continues to grow for the reasons that we have stated herein.

It must be recognized that Bill 165 will have no impact on the unfunded liability as the target assessment rates that will be set in the next year will take into consideration the decreases in the benefit levels, and the rates will then, therefore, be set accordingly.

Our position is that an alternative solution is needed. It is obvious to us that the first area that needs to be addressed is how the actual assessment rates are set. There has to be a close relationship between the target assessment rates recommended by the board actuary and the actual rates set by the Workers' Compensation Board. The board must begin to look at setting reasonable actual assessment rates dedicated to reducing this unfunded liability while still covering new claims costs and overheads.

Such a strategy must be placed in the legislation in

order to ensure that the Workers' Compensation Board will seriously begin to address the systemic underfunding of the workers' compensation system. Only by ensuring that the future funding of the system is adequate will the board be able to fend off future lobby groups wishing to decrease benefits to injured workers.

Another solution that should be considered is a review of the actuarial assumptions that are used in valuing the accident fund. At present, the assumption which they're using as a real rate of return on investments is set at a 3% level and the CPI rate is set at 5%. By increasing the assumed rate of return on the investments and lowering the assumed CPI, the fund would have a higher value and thereby a lower unfunded liability.

However, at this point, we have no way of ensuring that these changed assumptions would be adequate or even appropriate, but would strongly recommend that they be studied.

Our conclusion is that we believe there is a notion that the unfunded liability has been created by some form of overcompensation for injured workers. For too long, the setting of the actual assessment rates was determined by how well employers could lobby the next year's rate down instead of paying the real costs of the system. This cumulative effect has caused the unfunded liability to grow. The new 1993 classification scheme only caused some employer groups to be more vocal as their individual rates in their industry has gone up. Unfortunately, the unfunded collective liability has still not been addressed.

Employers' solutions are to cut workers' benefits or, better yet, de-index the workers' future benefits. Experience rating has not provided any real solutions either, as it remains just another way to get the employers out of their responsibility of paying their assessments. In fact, the unfunded liability has very little to do with the benefit levels that have been mandated by legislation and more to do with the failure to set the proper actual assessment rates.

What is needed is to develop a long-term strategy that will address the unfunded liability and maintain the current workers' payment levels without causing undue hardship. We believe that this is feasible and implementable.

We recommend that the legislation compel the Workers' Compensation Board to set the actual assessment rates that are in keeping with sound actuarial principles and assumptions. We'd like to thank you.

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Ms Murdock: This is refreshing because it's so different and explains it so simply to, hopefully, those people who are listening.

The effect of not updating the tables: Forgive me for asking a simple question, but those are the tables where the average age of males is 72, whatever. Do you know if there have been any studies done on whether injured workers live as long as the average person?

Ms Diana Clarke: As far as the board actuary told us, no, there haven't been. They just took it against the regular population, but they've never looked at the injured worker population specifically and their age.

Mr Mahoney: Just help me with your figures. On

page 3 you say that the net cost for the experience rating has been \$5 million to date.

Ms Gavin: It's \$500 million.

Mr Mahoney: Oh, okay, \$500 million.

Ms Gavin: Yes. We corrected that in our speech.

Mr Mahoney: Thanks. That clarifies that.

The analysis you've given us about the unfunded liability is interesting. I wonder if it would apply to the national and provincial debts, that the reason we have accumulated debts and ongoing deficits is because we haven't taxed high enough, and that our solution to rid ourselves of those burdens and our children of that burden would be to increase all taxes across the board. Same thing.

Ms Marcia Gillespie: One of the problems is that once you have an unfunded liability, it gets a life of its own. Right now, this unfunded liability is costing us over 8%. We have to earn on the investments over 8% just to keep afloat. The problem is, since you haven't put in that money that should be there, you're trying to earn that 8% plus a real rate of return on a very small pot of money. So it now has a life of its own.

Mr Mahoney: The stated goal of the board is to earn 3%. That may be a part of the problem.

Ms Gillespie: We would like that looked at.

Mrs Witmer: I would certainly dispute some of the facts that you've put forward. In fact, I would say to you, what is your response to the Provincial Auditor, who in his 1993 annual report indicated that the board must develop plans to attack the unfunded liability as quickly as possible?

Ms Gavin: I think you're right: They have to develop a plan to attack the unfunded liability as quickly as possible. What we're suggesting is that what you have to do is take a look at what is a reasonable time frame in which to do it and how in fact you are doing it. The whole premise of our presentation today is that if they are to attack the unfunded liability, then you can't set an actual rate which is far below the targeted rate which you should be setting in order to address the unfunded liability.

Mrs Witmer: Well, the target rate for the last—

The Vice-Chair: Thank you, Mrs Witmer. On behalf of this committee, I'd like to thank the Ontario Public Service Employees Union, Local 329, for bringing their presentation to this committee this afternoon.

HUMAN RESOURCES PROFESSIONALS
ASSOCIATION OF ONTARIO

The Vice-Chair: I'd like to call forward our next presenters, from the Human Resources Professionals Association of Ontario. Good afternoon and welcome to the committee.

Mr Mike Failles: I'd like to thank the committee for the opportunity to speak to you this afternoon. My name is Mike Failles. I'm here on behalf of the government affairs committee of the Human Resources Professionals Association of Ontario, the HRP AO.

We like to think that we bring a somewhat unique perspective to the matters which you are considering

here. The HRP AO is an association with over 8,000 members, and our members are human resources practitioners. Many of them are involved very directly on an ongoing basis every day with workers' compensation issues. It's a little different from the perspective of workers or employers per se.

What I'd like to do for you this afternoon is discuss really two themes in the bill which are of interest to our members and which we're pleased to see there, and try to develop, if I could, some of the ideas which we'd like to see implemented in the bill. There are two areas in particular I'd like to talk about. The first is the idea of fiscal responsibility, and the second theme is that of timely return to work.

If I could just take you first to the idea of fiscal responsibility, the obvious starting point is section 58 in the proposed legislation. We're pleased to see that the board is going to be charged with acting in a financially responsible and accountable manner. I thought it was somewhat unusual as I listened to some of the presentations today—perhaps the last one might be an exception—from workers' groups where there seems to be an assumption that this means cutting back on benefits. I would have thought all groups would welcome that concept being introduced, because it might mean a re-evaluation of assessments for employers; it might mean a re-evaluation of how the board can streamline its practices and save money. So I would hope that particular provision would be something which would be welcomed by all.

Along those lines, I'd suggest that what you probably should be thinking about doing is perhaps expanding it. We'd like to see some specific direction for the board on areas where they should be fiscally responsible, including the setting of rates and other administrative matters.

The other spinoff of that is the purpose clause. Sometimes purpose clauses get a little bit more play than they should. In this particular piece of legislation, the purpose clause actually has some significance, because the purpose clause is referred to in the legislation. If you look at what's proposed in Bill 165 in the new subsection 65(3.1), there's actually reference made to the purpose of the act. If you're going to be making those kinds of references, we'd suggest it's important that you have a balanced purpose clause which takes into account the matters which are set out right now in the purpose clause, which are good, as well as the idea that the board is going to conduct itself in a financially responsible and accountable manner. So we'd recommend that the purpose clause be amended to reflect that.

Another comment with respect to the fiscal responsibility of the board: We have a concern that Bill 165 as currently drafted tends to introduce too much political interference, or potential political interference, with the work of the board. The first order of business and one which the legislation addresses is restructuring the board, getting the board on track in terms of its responsibilities.

At that point we see the government's ultimate role with the board as one of appointing the members of the board, a change in the legislation if necessary, not one of being involved in the setting of day-to-day administrative policies of the board as is currently considered and

contained within the two sections allowing for government intervention, the first being the time-limited initial government intervention and the second being the provision for an ongoing contract, if you will, between the board and the government. We'd suggest those kinds of provisions aren't appropriate here and should be deleted.

The last area I'd like to talk about in terms of fiscal responsibility is the general question of what you should be doing in terms of introducing elements which are going to significantly increase the cost structure of the current legislation. That's not to say that some reforms aren't necessary or needed. We've heard today, and I'm sure you've heard on many previous days, concerns raised by injured workers or specific groups of injured workers that the benefits are insufficient or inappropriate. What concerns us, though, is that we are apparently embarking here upon kind of a Band-Aid approach. We're going to put the \$200 Band-Aid on here and then we'll go on and the royal commission will consider the longer-term way in which we can address some of these issues. What we'd suggest is that rather than doing a Band-Aid approach now, we have the royal commission look at a comprehensive review of how benefits should be paid to workers.

One of the first orders of business, I note, from the government's material on the royal commission is that the royal commission is going to consider the impact of other income replacement schemes on benefits and how that should be accounted. There seems to be a general presumption here, for example, that older workers are in need of immediate relief. Well, some groups may be; some may not be. It might depend upon the extent of other forms of income protection. Rather than trying to do this without a comprehensive plan, we'd suggest you have a comprehensive plan which also takes into account how these costs are going to be funded.

The second area that I'd like to touch upon today concerns the provisions of the legislation which really relate to timely return to work. By timely return to work, I'm referring to the desirability of getting workers back to the workplace as soon as is possible within the limitations of their injuries and the availability of work there.

1530

I haven't been here, obviously, for all the days of the hearing, but I'm sure you've heard before that this is now recognized as one of the most important aspects of rehabilitation. If you get people back early, get them back to their jobs or back to meaningful work, that assists in their rehabilitation and obviously also helps the employer keep costs under control. The longer a worker is out of work and not back in the workplace, the less likely that the worker is going to be able to get back to work, both because of psychological and physical problems which develop. In general, the HRPDO supports any measures that you're introducing here, even ones which as the gas association pointed out are going to cost money, such as mediation, which are going to enhance the ability to get people back to work quickly.

One of the first that I'd like to discuss is the requirement to provide information. In the proposal for subsec-

tion 51(2) there's a requirement or an obligation for physicians to provide reports which will be paid for by the Workers' Compensation Board. We'd like to see that expanded, for a couple of reasons.

First of all, one of the experiences that a lot of our members have had in administering WCB claims is that the doctor is often not the most important person in getting people back to work. The government affairs committee recently met with members of the OMA who are looking at return to work and the physician's role. One of the problems you have is that many injured workers go and see a family physician who is not a specialist in this area: not a specialist in rehabilitative medicine, not a specialist in occupational medicine. They are going to see this worker for a short period of time, perhaps once a week, and they are not inclined to take a very proactive role in terms of getting the worker back to work.

What we found is that people involved in physiotherapy and other forms of rehabilitative medicine are much more likely to be the key people in this process. So when you're talking about information flow, we'd like to see that provision expanded to allow for information from those people, from people in the various health services areas which may be treating the worker. That's the kind of information that's necessary in order to get people back to work quickly.

You really want to reduce, we'd suggest, any impediments to that information flow. One of the things in the legislation is that it's with the consent of the worker. This isn't specifically covered in our proposals, but I'd ask you to consider that if you had an insurance claim and you tried to go and claim that from the insurer and you refused to allow them to have the details of the claim—I'm not talking about other irrelevant information, but the details of that claim—the insurer is not likely to honour your claim. It seems to us that if you're going to put roadblocks in the way of getting information, that's not desirable. Obviously, the employer shouldn't have access to medical or other information which is unrelated to the injury, but if you're seeing, for example, a physiotherapist and that person is prescribing a course of treatment and has done perhaps some studies and exams which show range of motion and what a worker can do, you really want to get that information as quickly as you can without having to go through a lengthy bureaucratic process.

The second area I'd like to talk about is mediation. We're in favour of mediation, although I've got to tell you that in our experience the quality of mediation is going to determine the quality of the result. If you've got people who aren't good at providing mediation, you're not going to really get anywhere. You're just going to have an extra cost associated with the system.

With that in mind, we'd like to see something in the mediation process that allows for binding settlements on everybody. There's not much point in going into mediation, for example on a return-to-work issue, getting a deal with somebody and then you walk away and that person, whether it's the employer or the employee, says: "Gee, you know, that's not binding. Section 16 of the legisla-

tion says that I can't contract out of the act. Sorry, Mr Employer. This is really contracting out of the act, because I'm entitled to come back to work under these circumstances." And away they go with their complaint. We think there should be a provision in there for binding settlement. The settlement should be binding on all parties and it should specifically exempt the impact of section 16.

As our final point, and we think it's an important point, we'd also like to see the provisions in the legislation which purport to do away with experience rating as we now know it and replace it with something which is more subjective and to impose other subjective penalties for return-to-work programs—we'd like to see those deleted.

The reason is simple. Since the introduction of experience rating, there has been dramatic improvement in this province. I'm not saying it's directly related necessarily, but there has been dramatic improvement in this province with respect to lost-time injuries. One of the things our members like is that it's a direct cause and effect, so, for example, you don't have a situation where simply because you don't have the resources—you can't put in a fancy return-to-work program with lots of chrome—you're going to be penalized or not rewarded. If you get the results because you go the extra mile in getting the worker back to work, you go the extra mile in arranging for physiotherapy and modifying work, you are rewarded.

When you introduce a subjective element—you know, is the program very good?—some person down at the WCB head office in Toronto is going to tell you that, and with a staff of 50 and the costs that are associated with that, we don't find that to be very effective. People are going to be rewarded or punished based upon performance. We think that's the way it should be, and that's a system which we think is working well at the present time.

Subject to your questions, those are our comments. If I can help you in any way, I'd be pleased to.

Mr Mahoney: On that last point, I maintain that it's the small business person that's going to really get killed. The larger companies—Algoma, Stelco, Inco, General Motors—all have the ability to put in place whatever training program you want. In fact, a vice-president of Inco said to me that he has to send his people down to the workers' centre in Hamilton to get what he calls a grade 7 level of health and safety training when they're doing PhD training in Inco right in their own shop. He couldn't understand why he had to have those costs laid on him.

But what happens to the small business person who is unable, through time, lack of funds, pressures, everything else—he's got the bank yapping at him, he or she. They've got all these problems. They can't put it in place. And yet they may have a very good record with regard to health and safety and a very good record with regard to low accidents or lost-time injuries. I think they're going to get killed.

Mr Failes: I would agree with you. In fact, many of our members who work for large employers are the ones who are most sensitive to that because they see all the

chrome that can go with those programs. It's the small employer who doesn't have that ability. That's not to say the small employer shouldn't be just as responsible for getting people back to work in a timely way, but they invariably do not have the money and resources and manpower to devote to all of the paraphernalia that go with a very expansive program. So I'd agree with you.

Mr Mahoney: You say you support mediation. This bill gives really quite an unbelievable amount of power directly to the board to determine whether an employer has fulfilled their obligations, to go in—the concept of the WCB police etc. I think if this bill goes through the way it is, there will be nothing left to mediate. What do you think?

Mr Failes: The real objection we have, you see, is not with the mediation. It's with, I guess, as you phrased it, the WCB police. I hadn't quite thought of it in quite that way, but—

Mr Mahoney: Think about it that way. I'm not with the government.

Mr Failes: What we're concerned about is the potential for double and triple penalties for the same problem and the ability to deal with it.

Interjections.

The Vice-Chair: Order. Are you finished?

Mr Failes: Yes.

Mrs Witmer: Thank you very much for your presentation. I would agree with you that there is a need to get people back to work quickly and also to deal with the fiscal responsibility.

You talk here about the medical reports and the fact that there needs to be an amendment made that a positive obligation be included within the act on workers to cooperate. How would you suggest that happen? Because at the present time, of course, the act does not obligate the employee in any way to cooperate.

Mr Failes: I have to be careful on this one because, just for those of you who have maybe not had the firsthand experience, the board does in a way require the worker to cooperate, but it's a cumbersome method; it involves warnings and they start cutting back on benefits. By the time they deliver that kind of message, it's way too late. We like to think that in the first 30 days you want to get the person back to work or you've really missed the boat. By the time the current board practice has had any sort of effect, we've already missed the boat.

What we're suggesting is that there should be something explicit in the act, and this might be something which a mediator might be using to try to encourage a worker to get back to work. Don't forget that a worker may very well want to get back to work, but he's hardly a specialist in rehabilitative medicine. This may be the first time he's ever hurt himself, or he may have hurt himself many times, but all he understands is that he's got pain, and his doctor, who's probably not a specialist, has said, "Listen, how long before you want to go back to work?" and the guy says, "I don't know. It hurts. A month."

That may not be in his best interest. He should probably be getting physio, he should probably be in a return-

to-work program, to avoid all the things that come later.

What we'd like to see is something in the act that mediators and the board can use to encourage workers in positions to be more supportive of people coming back to work.

1540

Mr Wood: Thank you very much for your presentation. To follow up on the 30-day period that you're saying is very crucial to getting people back, in the pulp and paper industry throughout Canada, especially Ontario that I know of, they put clauses in the collective agreements back in 1970, and I think they had them all in by 1973, that if there's a disputed workers' compensation claim out there, the company would automatically make sure that sick leave, either from their own resources or through an insurance company, kicked in and made sure they were getting a paycheque in that 30-day period.

The feeling at that time, by the employers and the employees, was that this helped in speeding up the recovery and getting the people back into the workforce. The royal commission is going to be looking at some kind of universal disability plan, but I just wondered if you had comments on that. I'm talking about 20-some years ago that they had this plan.

Mr Failes: In fact, you see it with a lot of employers. Of course you see it in the pulp and paper industry, because they have pattern bargaining there and what's good for one is good for all. But just as an aside on that, one of the problems I see with our clients, and I'm a management-side labour lawyer, is that sometimes the WCB isn't very good at ensuring that those sick leave payments come off the WCB premiums, with the result that sometimes there's a double payment, in which case the employers—

Mr Wood: No. He's got to sign a waiver.

Mr Failes: The trouble is that the waiver, depending upon how it's signed, can sometimes be ineffective, because you then are in a situation where the person has been overpaid and you're trying to recover the money from the person. I'm only indicating that there are some problems with that system.

But I'd agree with you that you'd want to have some continuity of earnings there. Frankly, that kind of issue is probably better dealt with in the context of the entire cost structure for the Workers' Compensation Board rather than hiving off one issue, but I haven't really given any particular thought as to how it might be best dealt with.

The Vice-Chair: On behalf of the committee, I'd like to thank the Human Resources Professionals Association of Ontario for bringing us their presentation.

ASBESTOS VICTIMS OF ONTARIO

The Vice-Chair: I call forward our next presenters, from Asbestos Victims of Ontario. Good afternoon, and welcome to the committee.

Mr Edward Cauchi: Thank you, Mr Chairman and members of the committee. My name is Eddie Cauchi. I'm from the Asbestos Victims of Ontario. Our group is made up of mostly widows who are still waiting for compensation. We lost about 800 of our group in the last 20 years. The royal commission, as with all royal com-

missions, didn't do much for us, even though it cost \$1.8 million—nothing to help us.

I would like to start by asking why injured workers were not included in the bipartite committee of labour and management to advise the minister on this bill. I'm not going to bore you with what's wrong with the WCB. I'm here to try to convince you to go back to the Legislature and to try to convince the Minister of Labour to scrap this bill, as suggested by the trucking industry, the independent business and many other people.

This bill is so regressive towards injured workers that I consider it an insult to all injured workers. Being around for as long as I have been, I see too many bad apples in this basket. Never in my dreams of some 30 years—I've been coming here since 1963 fighting for injured workers. I have seen many people in the Legislature. They all come and go. I've appeared in front of this committee about 20 times. I never see the same member every time I come here. I think the only one who was here the last time is Mr Phillips.

After 30 years of helping workers at Queen's Park, at WCB, Tory and Liberal governments in power with the full support of the NDP, we finally got an indexed pension on December 17, 1985, and now an NDP government wants to take it back 20 years. I just talked to Mike Harris this morning. He must have written this bill because he suggested this indexing cutback about a year and a half ago.

Rehabilitation of injured workers is a big joke and is very expensive. I was on rehabilitation for 10 years. The reason I came out of rehabilitation was because I turned 65.

What injured workers need and want is a true rehabilitation program where injured workers look forward to employment and after his or her rehab program is complete, he or she gets meaningful employment. When I say "meaningful employment," I don't say that you rehabilitate somebody to do a carpenter's job and you send him to wash dishes. This is what's happening today.

I've been dealing with rehab people for the last 25 years. Today you have rehab counsellors, tomorrow you have somebody else. Today this guy tells you to go and look for work; the other guy says, "Just phone and don't bother to go." There is no direction. We had two task force recommendations about the same problem.

This bill is not going to improve health and safety in the workplace. You know why? I've been going to IAPA meetings for 20 years, once a year. The IAPA is funded by the WCB. All we have in there is a bash to talk about industrial health and safety—20 years. Where were these people when they built the mines in Elliot Lake and the Johns-Manville Corp? They're not going to improve health and safety in the workplace.

The only way to improve health and safety in the workplace is by taking them to court and fining them, and fining them very heavily. Then they'll learn. We fine people who are on welfare and steal an apple and put them in jail, yet when a company kills 800 people like Johns-Manville did, we let them get away with it. They're not even paying their fair share. Look at the

mining industry up north. I don't have a copy machine big enough. You read this paper in here, it'll tell you. This is today, 1994, we have a workers' health and safety organization in Ontario funded by the compensation board. Let them read this article. They're not paying one cent. Ellison Mines, they pulled out stakes and left the Elliot Lake people in disarray. Let me talk to these people.

I have dealt with 17 ministers of Labour and five chairmen of the board, and you know where they are today? They're all doing something else, because the people in the community figure they're doing not a good job so they turfed them out. The five chairmen, some of them were good people, I tell you that. I dealt with Dr Elgie and he was a wonderful gentleman; Michael Starr and Odoardo Di Santo. I can tell you, ladies and gentlemen, it's not the chairman's fault. When Di Santo got the job I said, "Odoardo, I feel sorry for you." It's not the chairman's job. It's the way you people put into the legislation.

That place in there is like a zoo. It's like Bosnia. One adjudicator don't know what the other adjudicator's doing. If this bill is passed, as a certain, the WCB is going to be like Bosnia, I'm not kidding you. It's not straightforward. It's too ambiguous to implement. It will be a nightmare for the adjudicators.

You know what's going to happen? They're going to have to hire another 200 people to deal with the appeals. Ask the worker adviser who is coming in tomorrow. Today you've got to wait two and a half years to have an appeal hearing represented by the worker adviser. If this bill goes through, they're going to have to wait five years for an appeal hearing. In the meantime, these people who are appealing have go on welfare and be a burden on the community. Is that what you want? No.

Paul Weiler, who did an extensive study of the Ontario system in the early 1980s, prompted the concept of experience rating. He did wonder in passing whether such a system might cause some employees to hide claims and increase condition. He pointed out that really there had been no studies which show the efficiency of the experience rating.

By the way—correct me if I'm wrong, some of you here—but this hearing must be a joke. The reason why? I read someplace that the compensation board already has a committee ready to implement this bill. Why would the WCB and the government have somebody to implement this bill when this bill is being debated? That's my question.

1550

I apologize for not giving you a typewritten, fancy brief. You see, I come in here by myself, I spend my own money, I help the widows with my own money, I get paid by nobody. I'm just an injured worker. I live on a measly pension from the corporation I worked for for 24 years: \$111 a month pension. If I spent seven years at Queen's Park I might get a better pension, like Peterson and the rest of them get.

The royal commission chairman I heard this morning. Somebody's not happy with the chairman they selected,

like Lynn Williams. You know something? There were 10 royal commissions done in the last 10 years. There's none of them from labour. But I tell you, we put up with it. One of them was Mike Starr, who is a good friend of mine. I didn't complain. He came from the Ministry of Labour in Ottawa under the Tory government. They make him to investigate the WCB. He did such a good job they made him the chairman of the WCB. We did not complain, and he did a good job while he was in there. But like I said before, it's not the chairman of the board; it's the act, the way it's written.

They talk about safety in Ontario? All they have to do is read the paper today. You know what it says? Canada and Ontario is C in poor workplace motivation; safety in the workplace is poor; poor relationship between employers and workers; poor relations for corporate credibility; corporations don't have credibility. This is on the front page.

Then you know something, Mr Chairman? You turn the second page, and what does it tell you on the second page? "Bosses getting generous raises, survey reveals. Average pay up three times the inflation rate." Yet this bill is going to cut down on us, the people who are making \$111 a month. Give us a break. We need the break, you know.

As you said this morning, there are so many thousands of injured workers who cannot afford to help their children, can't afford—on welfare. It's been too long since these people at Queen's Park and there have done something for us. If you don't do something for us today, I'll tell you, you're going to suffer for it.

I say to the members of the government, if you don't do something today—I have a copy here of when Bill Wrye got up in the Legislature in 1985 and said: "This is an historic day. We're going to give you indexed pension after 20 years of fighting."

Then Mr Gillies got up—he used to be a good friend of mine, the member. He said: "You know something? I applaud your decision, Bill Wrye. It was a very good suggestion, and speaking for the Tory party, I applaud you for that."

Then in turn Bob Rae got up and said: "This is an historic day for workers." I got a picture with him in here at Queen's Park on June 1, among 5,000 people, saying to us: "Elect me and I'll fix you up. I'll get you an indexed pension."

But you know what happened? Now the God-damned—pardon my language; I'm sorry. But when I talk about injured workers, I suffer, because I am getting old now. I am getting sick and tired of coming here. Thirty-three years is too long to come here and lobby for these injured workers—on my own. I never worked for a union, I never worked for a company. I do it from my own heart. I have these people phoning me for help every day, as you can see by some of these people. I drive them down here, I buy them lunch, not because I can afford it, but because I get a little bit more than they do. What can you say?

Mrs Witmer: That's right. What can you say? I appreciate the history you've given, the frustration you

feel, but I'm not sure that Bill 165 is going to address your problems.

Mr Cauchi: In Bill 165, like I said, there's too many bad apples. I would rather go back and get another bushel of apples. I think I wrote it down here someplace. I'd rather have another bushel of apples, and in that bushel of apples—I've been on bargaining committees for a long, long time; I was locked up in many rooms and they never opened the door until we came to an agreement, because where lives are involved and the livelihood is involved, they never let you go.

It should have been three members from management, three members from labour and three injured workers, because we're talking about injured workers anyway. So how come injured workers are excluded from the bipartite committee? Let's put these nine people in one room and I wouldn't open the door until they come up with a solution. Then there'd be no need for you to have confrontations with injured workers, with management, with nobody.

I don't want a royal commission, my friend, I tell you. I don't want a royal commission. You go to the seventh floor—sometimes if I have my lunch in here I go upstairs and I look at the royal commission by Dupré: \$1.8 million. They spent about six months in hearings, they brought people from all over the world to tell them about asbestos. What did they do to us? I didn't get one cent. Widows never got one cent. The government spent \$1.8 million. All they did is create the royal commission, the Tories at the time, just to pass the buck and delay things for our people. But they had a royal commission—big deal—\$1.8 million. There are three volumes which I have at home.

Mrs Witmer: So do you think this royal commission is an attempt to pass the buck too?

Mr Cauchi: Exactly. Why would you have a royal commission? I got nine royal commissions here. You see them? The last nine years, nine royal commissions. I don't have to tell you. I guess everybody knows about royal commissions and what their purpose is. I wasn't born yesterday. I only went to sixth grade education, but I have 33 years' experience in the Legislature, I tell you that.

Ms Murdock: Thank you for coming and taking the time to explain. When I saw the title, Asbestos Victims of Ontario, I thought actually that you were going to be talking more—

Mr Cauchi: We met before.

Ms Murdock: —about the history of how long it took for asbestos to be recognized. It is now, as you know, in schedule 4, where it was finally admitted to be a disease that the worker did not have to prove he got in the workplace.

Mr Cauchi: Let me give you an answer on that. I'm glad you mentioned that. I got a friend of mine. He was getting 20% compensation for his asbestosis, 20%. I went to the board. I said, "This guy is sick." There is schedule 4, there is this and there is that, like you're saying. They wouldn't give him more than 20%. He phoned me from St Michael's. They took his lungs out. In the afternoon

they gave him 100%. Was that a joke or not? They had to take his lungs out to get 100%. The guy is dying. They give him six months to live. This month in August, I lost three of my people. Like I said, there are only a few widows of us left.

I'm lucky, or maybe God gives me the strength to come and bother you in here, because I'll tell you, as long as I live I'm going to keep coming here and I'm going to keep raising hell with you guys, whether you're here or not. I'm not going to give up, no two ways about it. I just keep my fingers crossed and stay healthy. I had a bypass operation that the compensation gave me. I never had high blood pressure in all my life, but they gave me a heart attack trying to get compensation. They gave me rehabilitation for 15 years. You know what rehabilitation they gave me? They drove me crazy staying home waiting for somebody to call me to work. Nobody ever called at my place. That's rehabilitation in Ontario.

And I'm not talking about this government or another government. The three governments, the three political parties were in power. When I went on rehab the Tories were in power, and then the Liberals took over and I thought they were going to change it. Then the NDP took over and nothing has changed. So it's not the board. It's you people. It's how you write the act. Write it down so them guys in there can have a policy for one worker and not another policy for another worker. Make it crystal clear to them. These guys don't know whether they're coming or going up there. I know. I've been there twice a day sometimes.

Mr Hope: I've worked in asbestos. I come from a factory with asbestos, and I remember very clearly that we used to get black and come out and they'd say, "Nothing wrong with it." Now they've removed asbestos and put fibreglass in place. All it does is knock the asbestos off your lungs and leave the fibreglass there.

I see some of the changes in this act which are going to prevent, as we move into isocyanides and every other chemical that's out there reducing lung capacity—I see improvements. I understand your frustration, what you're saying, that there are reductions in the pension benefits. But don't you see, a person who has fought for the right for asbestos to be recognized as a disease caused by a workplace, don't you see some improvements in this bill that lead at least in a progressive way? I understand your frustrations about benefit reduction, but in some of the other areas, aren't there improvements you see?

Mr Cauchi: There is nothing in there for us, nothing in there for us that you could say that. We're not going to qualify for the \$200.

Mr Hope: But what about the future aspects? Are you cutting me off?

The Vice-Chair: Yes. That's it.

Mr Cauchi: We're not going to qualify for the \$200.

1600

Mrs Joan M. Fawcett (Northumberland): Thank you very much for coming forward and making a presentation yet again. I can understand and certainly feel your frustration. I too believe, and my party believes, that injured workers should be represented on the board. I

understand why you feel that way, and I would certainly hope that the government is listening.

There was an injured worker who came into my office in Cobourg. He was actually from Sault Ste Marie, but he was visiting his granddaughter. So he came in—and he's been watching the committee—and he said that the committee just doesn't get the point. He said none of us get the point. He said it's safety in the workplace that is the most important thing, that somehow we have to improve the safety in the workplace.

I just wonder, do you have any comments on the Workplace Health and Safety Agency? We've heard certainly some people who say that it is just not working, it needs to be revamped, and certainly our party believes and we have a suggestion as to how it can be revamped.

Mr Cauchi: Well, I'm glad you asked that question, because I'll tell you, in my plant we had a health and safety committee for 30 years. In 1965, when our first colleague died, I quit the bargaining committee. I said: "The heck with bargaining. I don't want no more to do with the bargaining committee and grievances. I'm going on health and safety." I travelled all over the world to find out what's wrong with asbestos, what's caused by working in asbestos and inhaling asbestos. We never had any masks, we never had any earplugs, we never had any safety precautions.

I came back and we created a joint management and union safety committee, and once a week we toured the plant. I'll tell you, I have the minutes at home of every meeting we had with management. "You fix that in there. You fix that in there. We'll mark them down." We'd go the next Monday, and it's the same thing, year after year after year, until the Minister of Labour, who was Bette Stephenson I believe, and I toured the plant. Then they changed it. But with me, being a member of the safety committee, nothing was done. I had to take the Labour minister—there were three ministers at the time.

You might know that at the time safety and labour were under three ministers: the Minister of Environment, the Minister of Labour and the Minister of Health. I had the three ministers at once. I've got a picture of them, the three of them walking into the plant to find out the true meaning of danger: working in that plant; the true meaning of disease that's going on in that plant. The three ministers had to come in. Today we're lucky; we only have to go under one Minister of Labour to say, "Hey, listen, you guys, you'd better clean your act up, and if you don't clean your act up, you're going to pay for it."

That's why I don't go along with experience rating. I don't believe that you should charge everybody the same rate. The same rate doesn't apply to me, because the more you charge the little guys—I agree with the independent business group. I told this to a Tory friend of mine up north one time in Thunder Bay. We had hearings here about 20 years ago about Bill 101. His people up north in the lumber industry were complaining because they were being hit hard by the compensation. Well, no wonder they were being hit hard by the compensation. The companies that moved out of Elliot Lake and Johns-Manville and Bendix in Windsor, they killed so many

people they pulled out. So the little guy had to pay for it. I don't think that's fair.

The Vice-Chair: Thank you very much.

Mr Cauchi: Do I have 20 minutes?

The Vice-Chair: No, you've had your 20 minutes.

Mr Cauchi: That's what I mean. Well, I'll tell you, I'd like to thank you, and I'm sorry if I lost my temper, you know, because I get a little bit upset when it comes to injured workers, my friends, I tell you.

The Vice-Chair: On behalf of this committee, I'd like to thank the Asbestos Victims of Ontario for their presentation this afternoon.

HAMILTON MOUNTAIN LEGAL AND COMMUNITY SERVICES

The Vice-Chair: I'd like to call forward our next presenters, Hamilton Mountain Legal and Community Services. Good afternoon and welcome to the committee.

Mr Hugh Tye: Good afternoon, Mr Chairman and members of the committee. I'd like to thank you for this opportunity. My name is Hugh Tye, and I'm a staff member of Hamilton Mountain Legal and Community Services. I regret that I'm not able to deliver a submission today with the same passion that we've just witnessed, but I hope that on behalf of the hundreds of individual claimants whom we have represented over the years I can act as a conduit to express some of the frustration and anger that they've experienced in their complicated journey through the web of workers' compensation.

With that in mind, I'd like to briefly tell you a little bit about Bob. I believe that his dealings with the board are representative of a very disturbing pattern that we see in our office. He first came to us in 1991 after an injury in February. He was 32 at the time, a member of a union, was unskilled, did heavy labour in a factory setting and had an injury to his shoulder and back as the result of a trauma.

There was no problem with the initial entitlement for which he received six months' total temporary benefits. The problems arose with his return to work and allegedly appropriately modified employment. He was not able to continue with his initial attempt because the work in fact was too fast. He was twice disciplined by the employer for not keeping up with the pace. When he had to stop, he did not receive benefits at that point. On his own initiative, he made a second return to work, experienced the same problems with speed and had to lay off.

At that point, a work site analyst from the board did attend the work site, but neither Bob was present nor was a union representative, and unfortunately he wasn't provided with a copy of the assessment report. Later he accessed it during the appeal process.

Again he returned to modified employment for approximately one month, when again he laid off due to speed, which he wasn't able to keep up with, and the repetitive motion.

The appeal process then began. He went through what is referred to as the expedited process, which meant he went straight to a re-employment hearing. He was unsuccessful. He then went to the WCAT, and a hearing was held in January 1994. An order at that time was

made granting him retroactive benefits with interest to 1991. He was also granted a future economic loss assessment and a non-economic loss assessment and was provided with retraining.

So, for Bob it took three years to establish that the work was not suitable, at huge cost to the board, I might add. But of most concern to us is the cost to Bob himself. During that three-year period, he was forced to go on welfare, he became extremely depressed, his marriage fell apart and his wife retained custody of the two children. He's currently living in the basement of a relative's home.

At Hamilton Mountain Legal and Community Services where I'm employed, we're a general service clinic, and we deliver services in the area known as poverty law. So it's appropriate that workers' comp constitutes approximately 60% of what we do. There's always an overlap when we act on behalf of an injured worker with other areas of the law, specifically welfare, family benefits disability, Canada pension disability and even landlord and tenant, as clients become unable to pay their bills.

Accidents and protracted delays impose huge costs on society generally, but the human cost is what is most tragic, and there are many victims. Like Bob, we see increased stress. We see a great deal of anger, which is sometimes vented in violence; a great deal of depression, which is common in many of the clients we serve; generally a loss of dignity, self-esteem and hope. Some individuals unfortunately turn to drinking and drugs. There's a great deal of family breakdown. Children's lives are shattered as parents split up. Part of our work is to make quite a large number of referrals to family lawyers as well as to counsellors of various sorts, whether it's financial counselling, marital counselling or psychological counselling.

Bill 165 specifically attempts to address, albeit we believe unfairly, financial cost, but it does not address the human costs. The bottom line is that accidents and industrial disease must be decreased in Ontario. What we require is a proactive approach to reducing accidents. We believe this must form the framework for all changes. Such a guiding vision was lacking in the formulation of Bill 165, and it is for this reason that we oppose the bill in its entirety. It is our hope that a royal commission can provide some sort of a guiding vision that would focus on the decrease in accidents.

In the written submissions, we address specific concerns that we have with the bill, as well as areas that it does not address. I would like to just touch on those briefly at this time.

1610

To begin with, de-indexing: As has been discussed this afternoon and many times, compensation is an insurance scheme whereby premiums are paid by employers in exchange for an exemption from lawsuits from injured workers. If accidents aren't reduced and costs are increased, our position is that premiums should be increased.

Premier Bob Rae, in announcing the proposed legislation to Queen's Park, talked about making a sacrifice and

asking people to give. We believe that the wrong people are asked to give and make that sacrifice by this bill. We believe what it represents is an unjust transfer of increased financial responsibility on to the poorest victims of the system, namely, injured workers.

De-indexing guts benefits over time. We are totally opposed to the Friedland formula, particularly the very shortsighted 4% cap that has been imposed. This is based on a recessionary economy and one which we hope is going to improve.

In the submissions, we also address re-employment and the experience rating system. It is our experience in representing individual claimants that there's a great deal of abuse by employers and undue pressure by the board as a result of the existing re-employment obligation and the experience rating system, and we believe that this is exacerbated by the legislation, because there aren't any built-in safeguards. I believe that Bob's example that I gave off the top is illustrative of that fact.

What we are finding, unfortunately, in many cases is that an improper job description is being provided by employers without worker input. Work site analysts seldom attend, and when they do, the workers themselves or their representatives are not in attendance, and when a report is made, they do not receive it. Workers are often forced to return to work before they are ready and frequently to unsuitable employment. In many cases, the modified work that is promised by the accident employer is not provided when the worker actually does return.

Our feeling is that because of the experience rating system the way it exists, it encourages not reporting. In some cases, employers are pressuring workers not to report. In other cases, workers are kept on the payroll rather than making a claim, or they are put on private insurance plans in order to reduce the number of claims and benefit from the existing experience rating system.

We believe that the board, if it is going to be effective, must have knowledge of the actual conditions of the workplace. This doesn't exist now. There must be more worker input, the use of analysts or their equivalent, and follow-up is key. Rewards should only be provided when there is long-term successful integration of workers into the workplace. We believe that has to be the cornerstone of any incentive program, as well as the re-employment obligation.

In addition, the bill doesn't address a number of issues related to the re-employment obligation that we feel it should. Specifically, it doesn't cover workers with less than one year experience nor places of work with fewer than 21 employees. We have problems with the limitation period lasting for two years, for example. Because of the protracted appeal process, we're often past the two-year obligation by the time the individual is in a position to establish that they have a right to return. We believe that the board should be authorized to order reinstatement of injured workers and that just cause should also be a part of the legislation with respect to termination.

Other issues that we address include deeming. This is not found in Bill 165. As with other worker groups, we have strong objection to what has become the practice related to deeming. The board presumes that suitable,

well-paying jobs are available, yet there is no legal obligation on the board to look into it. I believe WCB figures state that 80% of those deemed to have found suitable work were in fact never offered a job.

With respect to the \$200 monthly increase, we believe it is too restricted. It leaves too many injured workers with no increase and with limited inflation protection. We also have some concerns about the clawback, which has been referred to this afternoon.

In conclusion, we would like to emphasize that if there are to be changes to the compensation system in this province, there must be a change with respect to the mindset of employers and the board, and namely, we must emphasize a reduction of accidents. We need to promote the study of ergonomic factors.

The tables found at the back of our submissions show that the largest proportion of claims being made are as a result of repetitive strain or what is known as musculoskeletal injuries. These are things like tendinitis and carpal tunnel syndrome, epicondylitis, trigger finger. Things that can be modified in the workplace would severely reduce if not eliminate many of these injuries.

We also believe that health and safety must be made a priority and that the Ministry of Labour must increase its enforcement activity. We feel that Bill 165 fails in this fundamental regard at immense financial cost to injured workers, and it's therefore our recommendation that Bill 165 be withdrawn.

Mr Wood: I notice on page 5 and again on page 6 you're saying that with the surcharges and refunds for individual employers the system leaves a lot of room for serious abuse the way it is right now on experience rating. Under deeming, the impression I'm getting from the last paragraph is that you're saying that the then minister, Mr Sorbara, said repeatedly that deeming wouldn't be a problem and said that they would make regulations, which they never ever did. You're saying that you felt the minister at that time was held responsible for causing some of the problem on that.

In your conclusion section, regarding accidents and disease, the impression I'm getting is that the only way we're going to have a better Ontario is if we can find a way of eliminating accidents and disease in the workplace. I just want to know if you want to further elaborate on that, how that should be done. I know that under the Highway Traffic Act if you're speeding or if you were to cause an accident, there's careless driving, there's impaired driving charges, there are all different kinds of things. Should this be the case for the employers? If somebody's hurt, should they be hauled off to court and fined and repeatedly fined until such time as there are zero accidents or zero diseases in the workplace?

Mr Tye: I don't believe that anyone doesn't want accidents reduced. I believe that the existing system and the proposed legislation is more of a reactive approach to an existing problem, as opposed to a proactive approach: Let's do something regarding the root cause. That is our fundamental concern with the existing legislation and the bill as well, because we believe it preserves the status quo in that regard but also makes some very detrimental

changes with respect to injured workers.

Mrs Fawcett: Thank you for your presentation. You've certainly outlined many omissions in the bill, and I really think some of your suggestions are certainly well taken. Now, whether or not Bill 165 will be amended to address some of these—but certainly your suggestion that if not then it be withdrawn is well taken.

I was interested in the example of Bob, and certainly it must have been so horrible for him. When he first started the whole process and the first person he would've gone to would be the adjudicator, did things break down from there? I guess why I'm asking this is that it has been suggested—and I don't mean this to be in any way derogatory against the adjudicators; they're only doing their job; they're doing what they've been told—that at that level there is not enough training, that these people are very, very important and should have better training. Is that something you might advocate, from your experience?

1620

Mr Tye: I think I would. I believe that the case load of adjudicators is probably—

Mrs Fawcett: Horrendous. I do not where they begin.

Mr Tye: —horrendous. I appreciate the stress that they're under in delivering services. However, that doesn't adequately deal with my clients' concerns.

I think there needs to be more emphasis by the board generally at the outset, which is a point being made by I think both sides, that the appeal process is extremely protracted. Field investigations, for example, aren't done right off the top. They're perhaps ordered three steps up the appeal ladder by decision review. If they're done up front, and there's greater analysis and an understanding of the workplace itself for the individual claimant, then I think we're going to see a return to work much sooner.

Mr Arnott: Thank you very much for your presentation. I agree with you that the bill should be withdrawn, though for different reasons.

You talk about the experience rating changes that are in this bill. Where some of us would like to look at it in terms of a system which encourages workplace safety, you've said that the current rating system encourages employers to hide claims. I just wonder what evidence you have to offer in support of that statement. What's the extent of the problem in that respect?

Mr Tye: I can only speak from our experience, and I know that it's not unusual for us to take a matter all the way to WCAT on an entitlement issue because there wasn't a report made initially, and that's a decision made by somebody with the employer. Clearly, it's not in the worker's interests not to report, and in cases when they do, it's not being properly reported.

The suggestion we're making, and it's the only conclusion we can draw, is that the employer is reluctant in some cases because of the penalties under the existing system. We prefer to see an incentive program that reduces accidents, not just claims, because if the emphasis is on claims being reduced, then there's the potential, and the reality, for abuse.

Mr Arnott: What do you think the scope of the

problem is, though? Is it a huge problem?

Mr Tye: In speaking with other worker advocates, it's much larger than any of us would want it to be, not that there should be any problem, but I believe it's fairly generalized.

The Vice-Chair: On behalf of this committee, I'd like to thank Hamilton Mountain Legal and Community Services for its presentation to the committee this afternoon.

LATIN AMERICAN NETWORK GROUP

The Vice-Chair: I'd like to call forward our next presenters, from the Latin American Network Group. Good afternoon and welcome to the committee.

Ms Constanza Duran: Good afternoon, members of the committee. My partner, Alberto Lalli, and I, Constanza Duran, represent the Latin American people or the Spanish-speaking people of the city. We would like to express the problems that we see as a community with the new bill.

I would like to start by saying that the Latin American Network Group, LANG, was formed in 1990 in response to the needs of the Spanish-speaking injured worker community. Immigrants, generally, have problems that go beyond the obstacles inherent in the adjudication process. They are strangers in a strange land and must cope with a set of cultural norms that are outside their experience and understanding.

The Spanish-speaking community is, in addition, young and facing more problems than the already established ethnic injured workers' communities in Canada, the major problem being the language barrier. LANG was born to respond to those problems and to provide this group with a vehicle capable of expressing its concerns and its discomfort. Today we are trying to do exactly that.

In summary, we agree with and support the submissions presented by the Ontario Network of Injured Workers Groups, the Union of Injured Workers this morning and Injured Workers' Consultants, also this morning, which is a member of the Toronto Injured Workers' Advocacy Group.

In addition, and at the risk of being repetitive, we would like to remark on the following areas of Bill 165 which affect our community in a singular manner: (1) de-indexation, (2) the increase of \$200 under the subsection 147(4) supplement, (3) employers' access to medical records, (4) vocational rehabilitation, (5) mediation. Also, we want to add to these the problems that we find with the present deeming system.

Now I'm going to let Alberto continue with our presentation.

Mr Alberto Lalli: I will try to refer to the topics that Constanza mentioned. I apologize if I am repetitive, considering how many people already have talked to you and will talk to you. However, they are issues that are very important to us.

The cap on de-indexation, or the Friedland formula as it's been known, is one of the most worrisome problems that we see and that we are completely against and reject, for the simple reason that it is the only demand that has been granted to the injured workers groups in their fight,

as was mentioned this morning by the Union of Injured Workers. It was after many years of struggle, sometimes pretty violent if we remember history correctly. It was considered, in 1985, not as an increase of any sort of benefits but as an adjustment, and it was based on a solid rationale. It's just to protect benefits from the normal, logical erosion of our type of western economy.

The elimination of the protection, even in a partial way, is outrageous for us. We can see in the Hansard of 1985 all the members of the three parties expressing the fairness of and agreement with this application of the full CPI in workers' compensation benefits. Today, we don't see any rationale except to appease the business community at the expense of the disabled workers.

For the reason that most of our clients, most of the members of our community, were injured after 1990, under Bill 162 legislation they won't benefit at all from any of the changes that this Bill 165 will bring. On the contrary, they will be directly affected by the application of the Friedland formula in their current benefits.

Another point that comes across is the increase of \$200 under the subsection 147(4) supplement. As I said, the big majority of our members will not be affected by this increase, and the idea or the implication that they won't receive this increase because they have been adequately compensated is preposterous. We don't believe this is the case. Actually, we have seen people in these days of hearings who agree with that, even members of the business community. So we are strongly opposed to this just because the only thing that will be like a good sales pitch doesn't apply to our members.

One other issue that is very important for the immigrant injured worker community is the employers' access to medical records that will be granted with introduction of this bill. We believe this is unnecessary. There already have been two big task forces: one in 1986, the Majesky and Minna, and one in 1991 by the former chair of the WCB, Mr Di Santo. Neither of them saw any need for more employers' access to medical records. Actually, already there is enough in the legislation so that whether the worker appeals the decision or whether the employer does, they have access under a section of the current legislation. So we don't see why this could bring any other solution.

1630

In an ideal society we believe that a working relationship between the injured worker's family doctor, the injured worker and the employer could work, but the reality that we have shows the situation to be totally different. In my particular experience I've seen family doctors preparing notes to employers regarding physical limitations or requesting some sort of light duties for injured workers which employers totally ignore. What I see is this injured worker walking this note from the employer's company to the WCB without any result from anyone, and those notes end up on my desk. So it's hard for me to believe that now things are going to change and the employers are going to be paying attention to something that they haven't done in the past.

This brings a new right to employers, and I call it a right because history shows that the workers don't have

any say in the matter. Many times they just have to sign or agree, put their signature on a paper for anything, and if they don't do it, they run the risk of jeopardizing their benefits. That we have seen more than often.

The other issue we want to deal with is vocational rehabilitation. We see that when an injury strikes a new immigrant, the effect that produces is different from that on the one who has already been established here for years. He has the proper skill usually and a unionized type of work and a whole surrounding of social net to protect him.

The Spanish injured workers in your community, the Latin American people, do not have that, so the impact is greater, and now we will have to explain that the WCB is ready to offer vocational rehabilitation services also to their employer. So what I can see now is that they will feel that maybe the employers also fell and hurt their backs the same way or at the same time that they did, and maybe they need some sort of assistance to, what, look for work?

It's going to be hard for me. I can see myself in my office trying to explain that this is not the case. However, they're going to receive vocational rehabilitation services, and I have to explain now that the Workers' Compensation Board is also the Workers' Compensation and Business Board maybe, because we will have to deal with that fact.

For us, workers' compensation is compensation for workers, for people who have had injuries as a result of an accident in the workplace. Employers have nothing to do with that. Like John McKinnon said this morning, maybe the only thing they need to be assisted in rehabilitating is how to participate actively in the reinstatement of workers in the workplace.

Again, in an ideal society it's probably possible to see a working relationship between the employers and workers and the board, trying together to achieve a goal of return to work in the workplace, but the reality is not that. For instance, one of the reasons why Bill 162 was presented to us was that, for the first time, it was bringing reinstatement rights to injured workers up to two years after the time of the accident. But the reality shows that's not happening. We know that the figures for unemployed injured workers have increased, up to 78% according to the last figures released by the board.

In many meetings that we had with the workers' representatives and the board of directors we were always told that it was very hard to get the employers to actively participate in the voc rehab and the reinstatements. In our case, the people that we see, the non-unionized and unskilled, don't get any type of cooperation from the employers in the country. They just don't want to hear about them, and many times we've had to end up in the re-employment hearings branch.

It seems like we are now led to believe that with this bill employers are going to be willing to reinstate the injured workers and they only need a little bit of assistance from the board to get that. We have seen that it didn't happen with Bill 162 and has never happened before, so we don't believe it's going to happen; on the contrary. The tradeoff with Bill 162 in the name of

reinstatement rights was the elimination of the permanent disability awards. Now again, Bill 165, in the name of more reinstatement rights, implies the elimination of the indexation of benefits. The result is always employers getting the good deal, the lion's share, power, or whatever it's called in English, and the workers getting nothing. On the contrary, they lose.

The issue of mediation also comes into question. How difficult it is for an immigrant worker, who most of the time doesn't even speak the language, to enter into a sort of favourable bargaining situation with the company lawyers and Workers' Compensation Board representatives who know the game, who most of the time know each other because they have been dealing with the same company and the same mediation officer and creating a sort of familiar relationship in which the worker feels uncomfortable and left out. We many times, as representatives, have felt also the same.

The whole thing, besides implying the existence of an adversarial relationship right there, creating the whole idea or myth that the system shouldn't be adversarial, also brings the fact that it can't possibly be on an equal footing for injured workers. From the beginning of the mediation, the injured worker will be in an unfavourable position or situation, so we also disagree with this and don't think it's necessary.

The last issue that we want to talk about, even though it's not in the bill itself, but it has been at the core of the struggle and fight against Bill 162, is the deeming procedure. We disagreed then and we were hoping that any serious reform on workers' compensation would consider the elimination of the deeming provision because of the devastating effects on injured workers, particularly injured workers who are immigrants, unskilled in this country, including unskilled in the English language, which necessitated that they look for work in low-paying jobs and had accidents in those jobs.

The board always assumes that there is no potential there, there are no dreams, there is no expectation of anything else, and assumes that the only thing that worker required was to work as a parking lot attendant or a gas bar attendant and that's his goal in life. Therefore, any attempt to show the contrary is impossible. The deeming provision follows suit very swiftly and the person ends up with a FEL that's extremely low, or maybe no FEL at all, without a possibility of getting a job, unable to return to their original work and being abandoned by the system. That situation has been repeated over and over again.

Like I say, we hoped that deeming would have been considered in this bill, but it hasn't been touched, despite the promises, despite the opportunity and everything else.

Our conclusion is that we're strongly opposed to the bill and reject it in its entirety because, again, it doesn't do anything for our community except reduce their benefits by application of the Friedland formula.

1640

Mr Mahoney: Thanks for your presentation. I think you very clearly outlined your concerns, and what I am pleased to see is that you've objected to a number of the

sections in the bill and then categorically said you reject the bill, which is a little different from some of the other presentations.

This morning I asked the question to injured workers, since they objected to many of the same sections you're objecting to, particularly the de-indexing of the pensions, would they like the bill tabled so that we could, as you put it, I guess, get back to the drawing board? The answer was no.

The reason is, even though they objected to all of the different parts of the bill that you and they have outlined, they don't want to lose what they see as the one thing they've gained, which is the \$200, and fear that it would be getting muddled back with the review, rewriting of the bill or perhaps even worse, with the long-term prospects of going through the royal commission, that they could be a year, two, three years, whatever, away from seeing that \$200. So I guess my question is, is this almost a cynical way of trying to buy support for the bill on the part of the government by putting in the \$200 even though it's funded by de-indexing all the other workers' pensions?

Mr Lalli: What I believe is that the reason we are here is because there is a need to reform compensation and there is an understanding, an agreement, that the injured workers are not receiving what they deserve. We don't want to wait for the royal commission; we want changes now. My proposal is to get back and do those changes now. Don't wait for the royal commission. How we get to those changes? My question will be, do you think the injured workers deserve the \$200? Do you think that their pensions are not representative of the real disability?

The Acting Chair: Thank you very much. That was a good question; you'll think about that, I'm sure.

Mr Mahoney: Is this an independent Chair that's been thrown the microphone over there?

The Acting Chair: Very independent.

Mr Arnott: I don't have any questions to ask you but I appreciate your coming in to make your presentation and your statement that the bill ought to be withdrawn.

Mr Lalli: Thank you.

Ms Murdock: Thank you very much too. I just wanted to ask you a question: "Bill 162 was the termination of permanent disability awards in exchange for reinstatement rights" and this bill "is the elimination of indexation...for even more reinstatement rights." Given the sections in Bill 165 that make return to work and vocational rehabilitation—it isn't mandatory, but there will be surcharges applied if employers are not doing it, whereas Bill 162 was voluntary and it didn't work. Really, Bill 162 did provide reinstatement rights, but it was on a voluntary basis and we all see that it has not really worked. Would that not affect some of your deeming concern?

Mr Lalli: I don't know, actually. The experience that we have is that the board with Bill 162 was granted great discretionary powers and they have used it with deeming provisions in an incredible devastating way.

On the other hand, employers have fought every step

of the way for the reinstatement. That tradeoff didn't work and the feeling I have now is that this bill is—or the reinstatement rights or the saving of money that certain people mentioned because of those workers coming back to work, are based on how successful those reinstatement rights before would apply and I don't see that.

The board has been always very cautious in fining workers. For example, the previous speaker mentioned the problems of initial entitlement when the employers do not send the proper forms. I had also that experience. Our community is full of those examples. Even though there is a section in the legislation that empowers the board to fine the company, it never happens. We have our injured workers waiting for weeks and months without any result.

My concern is that the board needs a whole change of attitude. It's becoming more a corporate organization in their scheme and honestly I don't trust that the board will do that. My eight years of experience show me that. I had to see that.

The Acting Chair: On behalf of the committee, we'd like to thank the Latin American Network Group for taking the time to appear. I'm sure you'll be watching the process as it unfolds.

RETAIL COUNCIL OF CANADA

The Acting Chair: I would now like the Retail Council of Canada to come forward. Sit yourself down. Welcome to the committee.

Mr Peter Woolford: My name is Peter Woolford. I'm with the Retail Council of Canada. With me is Mr Keith Lamson, manager of health and safety with A&P stores. Also, staying with the company, Ms Martha Brunning is a claims management supervisor with A&P stores, and Ms Arlene Lannon, who is a director for Ontario for our sister association, Canadian Council of Grocery Distributors.

We do appreciate the opportunity to appear before the committee this afternoon on this issue. A quick commercial, if you will, in respect of retail council. Our members come from every sector of retailing and among themselves account for something over 65% of all of Ontario store volume by sales. Our sister association, as you can see by its presence here this afternoon, fully supports the views that we put in our submission and what we have to say.

Retail council was a member of the business steering committee, which provided advice to the business members of the Premier's Labour-Management Advisory Committee, and we're also a member of the Employers' Council on Workers' Compensation. We fully support the submissions they've made to this committee and the business proposal submitted to Mr Rae back in November of last year.

To reiterate what many other business groups have told you, and I guess what many other employee groups are telling you, injured worker groups, Bill 165 is unacceptable and it should be withdrawn in its entirety. From our perspective, it perpetuates and extends the workers' compensation system, which is notorious across Canada for wasteful operation and excessive compensation. In

fact, the minister himself acknowledged this when he appeared before this committee when he said that his reforms would result in the unfunded liability in fact going up to \$13 billion.

I'd like to come to a couple of detailed items that we wanted to focus on particularly, simply because of the constraints of time. The first, of course, is experience rating, about which you've heard a considerable amount.

The proposal to augment the current experience rating system with a board evaluation of a firm's practices is of the greatest concern to the retail trade. We believe it will substantially undermine the purpose and effect of experience rating by overriding the focus on results with a test on process. In particular I would like to note that this is a really serious concern for the thousands of independent members that we have who don't have the kind of processes the board will be testing for, and these very good performers will find themselves automatically at a disadvantage.

I think there's another factor the committee should consider here and that is, simply, NEER works. I think the clearest example of this was a study that the board itself did in 1991 in response to labour union charges that NEER was causing employers to underreport or hide accidents. The board went out with a mandate to look for evidence that NEER was not working and it simply couldn't find it. The conclusion of that very thorough study was that NEER is operating as it should.

At this point in the presentation I would like to turn to Ms Brunning, who's going to talk particularly about how NEER has worked for A&P stores, the impact it's had on their experience and the way it has operated to change their behaviour with respect to accidents and health and safety.

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Ms Martha Brunning: A&P is a retail grocery company which operates in Ontario under the banners of A&P, Dominion, Miracle Food Mart, Miracle Ultra-Mart, SuperFresh and Sav-A-Centre. When we entered the NEER program in 1991, we believed that we had made progress towards our goal of reducing worker accidents. Our initial assessment under the NEER program, I am sorry to say, resulted in a large surcharge being levied against the company.

The NEER program, therefore, had provided us with the clear and direct feedback on our performance that we had been lacking. Through education and discussion about the negative and the positive results which are possible under the NEER program, the company renewed and increased its commitment to workplace health and safety.

Over the course of the next few years, A&P revamped its accident prevention programs in the stores by increasing training and by working with the joint health and safety committees to make them more effective. We have implemented a back belt program and accident-free challenge in all the stores. Awareness of health and safety issues and concerns has increased throughout all levels of the company and all field personnel are more aware of the issues at hand.

Administratively, we have increased our vocational rehabilitation staff and hope to increase our claims management staff as well. We have introduced a health and safety supervisor for our warehouse locations and have also established a modified work centre for our injured warehouse employees, that has proved very successful.

Our company has seen the results that are possible under the NEER program. Since entering the program, our accident frequency has been reduced by 31% and our sheer accident numbers have been reduced by 25%. Our performance index under the NEER program has improved with every quarterly report, and we will have finally achieved an initial rebate on our 1993 accident year.

In terms of sheer dollars, the 1993 rebate represents less than 10% of the initial assessment we paid for that year. However, in real terms, the rebate represents a decrease in the injuries suffered by our employees as well as an improved ability to provide meaningful, modified work in a timely and effective manner. In short, it represents the creation of a healthier, safer and more productive workplace, something that we're all striving for, labour and management alike.

A&P is so strongly convinced of the value of NEER's basic principle of judging actual performance that we are currently examining the possibility of implementing an internal mini-NEER program in all of our locations.

All health and safety professionals know that a safe workplace can only be created with a top-down commitment from management and a feeling of empowerment among staff. The NEER program has provided us with the essential tool to create both of these conditions.

A&P is committed to continually improving its health and safety performance, but it is the NEER program that has facilitated our progress to date and will ensure our progress in the future.

Mr Woolford: I'd like to finish with a couple of quick remarks on a couple of other parts of the bill. The changes in the bill with respect to vocational rehabilitation and return to work are of concern to us. Frankly, we can see no justification for the extension of the powers of the Workers' Control Board—Workers' Compensation Board in this area; pardon me, a little Freudian slip there.

The board, in our view, already has two very powerful instruments to promote those objectives: experience rating, as you've already heard; and the existing, fairly stringent re-employment requirements. My understanding is that re-employment in fact is required under the current legislation, it's not voluntary. We can only conclude that the proposals really are intended to give the board greater power to intervene in the operation of companies and to extract money from them.

The third, particular area we'd like to address, just very briefly, is the question of policy direction. We strongly oppose the section giving power to the government to impose policy directives on the board. In our view, this undermines the status of the Workers' Compensation Board as an independent agency and raises very substantive questions about the minister's statement to

this committee that responsibility for the unfunded liability rests with the Workers' Compensation Board, not the government. If it rests with the board, then it should have the authority to make the decisions. If the government's going to make the policy decisions and the operating decisions then it should carry the responsibility. You can't have it both ways.

In conclusion, I think we might look to New Brunswick. In 1991 New Brunswick was substantially headed where Ontario is at today. Workers' compensation costs were outstripping revenues by 15% and the government recognized it had a serious problem on its hands. As a result, they reformed the legislation.

What did they do? Benefits were cut. A three-day waiting period was put in place. Compensation is not paid to employees who are getting income from other insurance or from their employer or from top-ups; they're taxed back. Stress claims were limited.

And what are the results? In 1993, the board plans to cut its premiums by 18% to an average of \$1.70. The unfunded liability dropped by \$18 million in 1993. They expect a \$20-million drop in 1994. They expect it to be gone by 1997. And as the chair, Mr Roushorne, says, "The bottom line is, it works." Bill 165 will not deliver these results and it's not meaningful reform. In our view, it should be scrapped.

We'd be pleased to answer questions from the members of the committee now.

Mrs Witmer: Thank you very much for your presentation. You have pointed out here a fact we've heard from all of the employers that experience rating works. In fact, you've attempted to put to rest here a fallacy that has been put forward by the unions that employers are trying to hide the reporting of accidents and you've pointed out here that there was a study done and there was conclusive evidence that it indeed was not happening and those fears and those allegations were unfounded. Do you have any proof that this has ever happened to any one of you in the areas where you work? I've heard this again and again.

Mr Woolford: I certainly have not heard anything from my members. We have a large number of workers' comp professionals on our employee relations committee. Certainly there has been no discussion there about clever ways of hiding accidents or avoiding the responsibility. I should say that those are large firms and they behave responsibly. Whether it is taking place in independent merchants or not—I would be surprised if it is. You've got a family environment, you know your employees personally. In many cases you've been to their homes, they've been to yours. You're not going to hide accidents in that circumstance either. I would doubt it and I have had absolutely no sign that it's taking place.

I don't know if any of my colleagues here have anything to add to that.

Mr Keith Lamson: We don't understand how that could be true, because as soon as an employee goes and tells a doctor where they were injured the doctor submits it to the board as well. In some cases, where the employee doesn't tell the store manager of the incident and

goes to the doctor, we get a notification from the board saying we've been notified by somebody other than the employer that an accident has occurred, please give us details. Then we have to track back to the employees and say, "What happened?" We don't understand how anybody can hide a claim. The doctor's going to report it.

Mrs Witmer: I guess it's so unfortunate that these allegations continue to be put forward because, as you've indicated, the doctor's involved and the report indicated it wasn't happening. I was pleased to hear about the A&P experience where, when there was some positive reward, a process was put in place and that it's been so very, very successful.

Mr Wood: Thank you for your presentation. Just to follow up on what Ms Witmer was questioning on, we've had the legal profession representing injured workers and they've stated that there are all kinds of cases where the forms have not been filled out and they have to take it through the appeal and then the employer comes forward and says, "Yes, okay, he did actually get hurt or she did get hurt on the job," and it's resolved that way.

I find it kind of interesting and curious that you're saying on page 6, "Vocational Rehabilitation and Return to Work"—my understanding is that back in 1914 and 1915, an agreement was reached that the employee would not be able to sue the employer for injury on the job and the compensation act was set up as an insurance company to deal with that. You're saying—there are a couple of different spots—where the WCB would have "more opportunities to interfere with the operation of a firm," and on the bottom of the page you're saying, "One can only conclude that the proposals are really intended to give the board...greater power to intervene in the operation...and to extract money from them."

I was under the impression that this was the agreement that was reached back in 1914, 1915, that the employee would give up his right to sue and compensation was set up to take care of that. Now you're saying you don't want the insurance company or the WCB to interfere in your operation and make sure it's safe and healthy so that there are no injuries and the cost is down. I'm just curious on the statements you've made in your presentation.

1700

Mr Woolford: That's not the case. What we are concerned about is that some of the additional requirements that the board is going to be putting in in this area talk more to process within a firm rather than the results and that an evaluation of that process will then limit a firm's access or the amount of rebate it might get or increase a penalty it might receive under the NEER program. We feel the NEER program solves a lot of those problems. It solves them, as you've heard, in a very effective and direct way, and we're concerned that it will muddy the water.

I think we're concerned as well that firms are not able to carry out voc rehab and return-to-work which makes sense in the context of that firm and which makes sense to them and their employees together. If you get a series of bureaucrats laying down a series of standard procedures, what you end up with is a coat that doesn't fit

everybody in the province, and we are concerned that then will become a template that will be applied willy-nilly to a lot of very, very different operations around the province.

A good example is the independent business area, where we have many independent retail merchants who don't have the kind of overburden of staffs and headquarters operations that something like this would naturally envisage. Yet they are among the very best performers with respect to workers' compensation. They could end up paying surcharges because they do not meet the template of best practices and they could end up paying a surcharge because they do not have return-to-work policies.

I can think of an independent member of mine who has five stores, about 40 employees, in operation for 20 years, one accident. A return-to-work policy makes no sense in that kind of circumstance. She has had one claim for \$80 in 20 years of operation in five stores. To tell a firm like that that they've got to keep a return-to-work policy fresh and meaningful is just not realistic, and yet they could well be judged on that basis.

Mr Mahoney: It's interesting to me that government members wouldn't understand why you're concerned when I read subsection 103.1(2), "In determining whether a refund is available or the amount of a surcharge under a program, the board shall consider" four things: health and safety practices, voc rehab practices, practices, programs regarding return to work and "(d) such other matters as the board considers appropriate." Does that frighten you at all?

Mr Woolford: Given the experience with the WCB, it causes you to pause for a minute. Yes, it's hard to know exactly what's intended in the fourth area, but even in the other three areas our concern is that we will end up with a series of requirements which are driven more by the need to fill in a form, by the need to meet certain standards determined by the board, rather than by what actually works in the context of the firm. There's a great passion for committees in some firms. In other firms, they do not believe in committees. They believe it's a waste of time.

Mr Mahoney: But there's no reference to results, either.

Mr Woolford: Exactly. In fact, this is a layer on top of a program which measures results. As we heard from A&P, that focus on results leads to getting the attention of managers in the firm and, frankly, of the employees, and that's what works.

Mr Mahoney: It's interesting to have A&P here, because I guess you folks have had a lot experience dealing with the labour laws that have been imposed by this government.

You talked about the agreement that was supposedly entered into. We've heard from the OFL and others that this legislation mirrors that PLMAC agreement. I want to share with you—I know the government members will be delighted at hearing this again—a letter from the Premier on his letterhead to Jim Yarrow at the ECWC wherein he says, and I quote—this is Bob Rae, not me:

"A 'purpose clause' will be added to the Workers' Compensation Act which will ensure that the WCB provides its services in a context of financial responsibility."

The Premier made that commitment in April 1994. I guess I've asked a lot of other people: Either the Premier has been overruled, he was mistaken or he lied. I don't know which of those. What do you think?

Mr Wood: Why don't you talk of Greg Sorbara when he was Labour minister?

Mr Mahoney: Do you want a copy of this?

Mr Woolford: I have a copy already, thank you. Our view certainly is that this is not a financially responsible package. It does not put in place the changes needed to guarantee in fact the welfare of employees in the future who are injured. We are very concerned about an insurance company that is bankrupt and is intended by these reforms to become even more so.

The Vice-Chair: On behalf of the committee I'd like to thank the Retail Council of Canada for bringing their presentation to the committee this afternoon.

BARRIE INJURED WORKERS SUPPORT GROUP

The Vice-Chair: I'd like to call forward our next presenters, from the Barrie Injured Workers Support Group. Good afternoon and welcome to the committee.

Mrs Joan Thorn: My name is Joan Thorn. I'm president of the Barrie Injured Workers Support Group. We're affiliated with the Ontario Network of Injured Workers Groups, and we fully support the network's position on Bill 165.

Mr Paul Fudge: My name is Paul Fudge. I'm vice-president of the Barrie Injured Workers Support Group.

Mrs Thorn: We will not support this bill in its present form, as it is a bill that supports big business and corporations and has no concern for disabled workers whatsoever. The hands of the disabled and killed workers helped build this country, and now they're to be punished by de-indexing their meagre benefits. Some of them are already living in poverty. With the de-indexing of their benefits, they will have to go on social assistance, and that just puts a bigger burden on the taxpayers.

A monthly increase of \$200 has been promised older workers who received small, inadequate permanent pensions. Some receive a supplement and some don't. This increase must be awarded on the pension and not on the supplement. Those who were injured after Bill 162 and are on a permanent pension, whether able to return to the workforce or not, must also receive this increase. But it seems like they're going to be left out.

Anyone who was injured after Bill 162 has the right to rehabilitation. The employer is obligated to reinstate an injured worker who was injured.

The problem here is, a case worker will intimidate the employer by threatening a heavy fine if he doesn't reinstate the worker, whether the worker's able to go back to work or not. The worker is threatened to be cut off his benefits if he does not return to work. A family physician and/or specialist is the one who decides when an injured worker is fit to return to work. An adjudicator or case worker should not have the authority to override

the medical decisions of doctors who are looking after an injured worker and forcing them back to work before they are ready to be reinstated in the workforce.

When an employer requests a worker's medical file, that employer should only be given medical evidence relating to the injury or disease. Employers will always find a reason to claim second injury and enhancement funding because of an old injury or disease that they say contributed to the worker's disablement.

When an injury occurs and disables a worker, he/she can no longer work at an occupation that would pay the wage earned before injury. The difference in wages paid that injured worker must be realistic, not an adjudicator saying you could go out there and earn x number of dollars doing a job that does not exist. Deeming must be stopped. A FEL award must be based on realistic future earnings, not phantom jobs.

Paul Fudge is an injured worker who will explain his FEL award.

Mr Fudge: Yes, I'm an injured worker, and I know all too well how the WCB works. I was injured on May 31, 1993, when I fell 15 feet on to a cement floor, injuring my back. I have just received a cheque, and I have the stub here to show, for my FEL award for a two-year period from September 1, 1994, to September 1, 1996, for \$2. I have been told by the WCB that I will not lose any wages when I go back to a job search and hopefully gain suitable employment. I was earning \$650 a week, or \$16.25 an hour, as a store manager.

1710

In the voc rehab program of workers' compensation, I have turned around and had to do what they call a job search to determine that a job was there in order for me to go back to school for upgrading. I have gone around to employers in the area, and they told me: "Yes, there is a job when you are done. You have to start at the bottom." You do not start at the top. You have to work through either as a sales clerk to work up to be a sales manager or you start as a department manager and work through to be a store manager.

The rate of pay would be anywhere from \$7 to \$8 an hour, but I have here a letter from WCB voc rehab stating that: "Through the vocational testing and research done by yourself, you have decided on a new job target of retail trade management/general business manager. These jobs pay between \$643.26 or \$709.61 gross per week." I've gone out and found that it pays only \$320 per week.

Also, the course at Georgian College which I'm taking in Barrie: They say that I chose it myself. I was told by WCB to take it. I had no say in the matter whatsoever.

Mrs Thorn: This is why we feel that the FEL award is very unjust and unfair. When you start a job, no matter how many diplomas you have, if you go to a new position, you start at the bottom. You do not start at the top, and this is what they're basing their FEL awards on. And your rehab, what you had to go through for your rehab?

Mr Fudge: On the voc rehab, for my vocational rehabilitation part, I had to turn around and clip newspaper ads and everything to justify my sponsorship in a pro-

gram at the college. This is what they ask of every person who qualifies for voc rehab training. You have to do all the legwork and you have to prove to them to be justified in taking that course, but you have no say in it. They tell you what you're going to do. You have to research it. It's an experience I will not forget, believe me.

Mr Hope: My question would focus on the issue—and Paul, maybe I missed it. Your previous employer: What role did he play in this whole part of rehabilitating you and putting you back to work?

Mr Fudge: My previous employer would not accept me. I was working in an independent store and he would not accept me back to my pre-injury job because I would end up doing less work than him and he owned the company.

Mr Hope: He'd probably be one of the schedule 1s who didn't really care about taking back an injured worker, doesn't want the responsibility of vocational rehabilitation and feeling about the work ethics.

Mr Fudge: Yes.

Mr Hope: Don't you believe it's his responsibility to make sure that the re-employment—I mean, the injury occurred in the workplace there, and why isn't that person responsible I guess would be the question I would be asking.

Mr Fudge: With the limitations that have been placed on me medical-wise, the way the economy is today, I would have to be able to do some of the work in the store. What I could technically do right now would be just administrative duties. With the amount of lifting in the store, there's no cases under 22 pounds that I could lift on a regular daily basis, and on Fridays I would also help with the handling of the front-end service work, and I would also do customer carryouts. There's no way I would be able to take the bags out for the customers when we're busy. So what this man was looking at was 22 hours a week out of my 40-hour work week would be just spent on administrative duties and the rest I'd be just sitting around collecting a paycheck.

Mr Hope: Joan, my next question would be to you. Being as you deal with the Barrie area and dealing with injured workers, and we've heard employers come before this group saying, "Our concern"—I mean, I just heard Paul's incident that the employer wanted no responsibility for vocational rehabilitation. In your area that you deal with with injured workers under employers trying to stop claims from being paid, calling them frivolous, some of the allegations are that there's fraud in the system, that people are faking their hurt and, you know, they're being paid. In your expertise and your experience in the Barrie area, have you seen employers who use the coercive process of making sure that claims don't get processed?

Mrs Thorn: Yes, and the Royal Victoria Hospital is one. They have a huge sign right by the elevator stating, "We're accident-free for the month of July." You go up to the seventh floor and there's two nurses up there who are living on painkillers. They're afraid to put in a claim because they'll lose their job, and being elderly ladies they say, "Where are we going to get a job now?"

Mr Hope: So they're finding this is the way to

improve their experience rating program by making sure the claims are not a part of the process.

Mrs Thorn: That sign is right there, and I was almost tempted to tear it down. There are two pregnant women in there, and both their doctors have stated that they should not be working, but if they leave now, they will not be eligible for their sick benefits.

Mr Hope: You've expressed your opposition to the bill and your views of the bill, and I know there are problems with the doctor obtaining information. I mean, why would your employer want your information when he had no intent of bringing you back? But under the re-employment aspect and making sure there are certified programs in place to make sure that workers return, wouldn't that part of the bill solve some problems? I mean, the biggest problem of workers' comp is that people get injured and they're on workers' comp. If we can fix that problem and create healthier and safer workplaces, we eliminate some of the problems that people face with workers' compensation. So I'm just wondering, with that section of the bill, do you find it a means of improvement?

Mrs Thorn: Health and safety would be a great means to improvement. Like with Paul's case, he had told that man I don't know how many times that the rung on that ladder was broken. It never got fixed. But Paul's back did.

Mr Mahoney: Interesting statement: The biggest problem with workers' comp is there are people on workers' comp. That's what I just heard. I wonder what it's there for.

Paul, I heard your complaint against the workers' compensation system much more clearly than your complaint against your former employer. I don't know who your former employer was, and it doesn't matter, but it seems to me what you said is, you got a ridiculous cheque for two bucks. You weren't allowed the freedom to make certain choices regarding your retraining and things of that nature. Service delivery within the workers' compensation insurance program, which is there, where your employer paid premiums on your behalf and on behalf of all his employees to protect them and to get them rehabilitated and protect their income and do all of that kind of thing, sounds to me like it just fell apart.

Mr Fudge: Yes, that's what it seems like.

Mr Mahoney: Do you have any suggestions as to how we can improve service delivery at the board? Instead of the continual attempts to suggest that all the employers in Ontario are just terrible, rotten people who don't care about their workers—and I reject that out of hand—I would rather see us try to focus on how we could improve service delivery at the Workers' Compensation Board to help somebody like you when you get hurt.

Mr Fudge: There's too much running around at the WCB. I've been cut off six times in the last year and I had to fight to get reinstated. I came close to losing my home, causing problems in my family. I've been placed under mental anguish and stress by this, and I don't feel an injured worker, with his injury, needs to go through

this type of nonsense, so-called, with it.

Also, while you're healing, they turn around and send you to physiotherapy. You're in physio, you're coming out of it, and then they tell you: "Okay, go into the voc rehab. Now what we're going to do is get you back into training and school." Meanwhile, you're still being treated medically.

I was injured on May 31, 1993. It was January 3, 1994, when I was diagnosed as having a bone injury, and as of that date and time, I was finally given the just treatment that I was supposed to deserve. But even now I have letters in my briefcase dating from May 6 that I was terminated from WCB and I was capable of going back to doing my pre-injury job. As I stated to them, I said: "That's fine, I can go back to doing my pre-injury job, but there's one thing I would like to show you. How can I go like this?" And this is what I told them: "I'm wearing a back brace now. I have limitations that will not let me go to work, and you're telling me, 'Get back to work.'"

As a result, I had to appeal that decision, and I won the appeal on May 10. After taking medical forms from their own doctor, who was a Dr Ford that they sent me to see, highlighting it and sending it back in, they accepted my appeal, and I won the appeal. Then after that, they finally got everything rolling for me to start back to school.

1720

Mr Arnott: Thank you very much for bringing us your opinions and coming down from Barrie for your presentation; we appreciate it.

Mr Fudge: Thank you.

Mr Arnott: Do you think it makes sense, though, for the government to give employers some positive incentive to make their workplaces more safe?

Mr Fudge: Yes, I do. I feel it does, but with the economy the way that it is right now—it's starting to pick up, but when it was slow, most employees will turn a blind eye and do what they're told in order to keep their jobs. Actually, that fear of keeping their job is still there. If we were to have the occupational health and safety stepped up a bit more, I'm sure that you would go and you would find roughly 90% of the workplaces are in violation of the act. I think we need to really get on the program and do more. Right now, the sheep are meeker, they will not speak because everybody wants that paycheque. As small as it may be right now and what you have to do to keep your job, they will do to hold on to their job.

Mr Arnott: It seems to me the best way to encourage employers to make the workplaces safer is a bottom-line assessment of how safe they've been in the past, and that's what the experience rating system is all about, and I would hope we could enhance it as opposed to change it in a way that makes it more bureaucratic, I think. That would be my suggestion.

Mrs Thorn: Why do you have to notify these employers when the health and safety is coming, because when they get there—they'll call and say we'll be there on such and such a day at such and such a time. Every-

thing's just so-so. If they were to go back three days later, they would find out what it's really like.

Mrs Witmer: I would agree with what you've said. There's certainly a need for greater awareness of workplace health and safety training. I guess the problem at the present time, though, that we have is that most of the training that's taking place is very global, it's not very sector-specific. As a result, the workplaces are all receiving the same type of training, and yet, if you work in one environment or in another, there's quite a difference. I don't know if you're aware of that, that right now it's not having the same type of positive impact because it's very global.

Mr Fudge: I agree. They're striving to try to get the occupational health and safety going in all the businesses that we pretty well have, but even with what's been done, there are still a lot of small businesses that do not adhere to it. The ones that are under 20 employees are the ones that really should be looked into. The large companies and organizations, they might have a small amount but it's not as great as the small employers that have 20 or less working for them.

Mrs Witmer: Were you in a small workplace?

Mr Fudge: Yes, I was.

The Vice-Chair: On behalf of this committee, I'd like to thank the Barrie Injured Workers Support Group for their presentation to the committee this afternoon.

CANADIAN UNION OF POSTAL WORKERS,
LOCAL 560

INJURED WORKERS ASSOCIATION,
GUELPH-WELLINGTON

The Vice-Chair: I'd like call forward our next presenters from the Canadian Union of Postal Workers, Kitchener local. Good afternoon and welcome to the committee.

Mr Moe Dhooma: My name is Moe Dhooma, from the Canadian Union of Postal Workers, Kitchener Local 560. To my left is Mr Robert London, injured workers' president, Guelph-Wellington.

Thank you for giving me this opportunity to come before the committee this afternoon in order to express our concerns regarding the implementation of Bill 165.

Sections 51 and 63 of the act, Bill 165, respectively, we feel that these amendments in which they are presently being laid out will indefinitely be of grave consequence to the injured worker.

Pertaining to section 51, in regard to an approved return-to-work program: The reasons behind the worker providing medical information to the employer would not necessitate an employer to stay within the guidelines set forth by the WCB in providing a suitable program to which an injured worker could be returned.

Diagnostic information, the way it stands, provided by the worker, should only be directed to the board, and non-diagnostic medical information regarding such employee would then be provided to the employer in order to set up a return-to-work program approved by the board.

The question to be asked at this time is whether or not

the board would deem the worker uncooperative, which, in turn, would thus affect the worker's vocational rehabilitation. As far as diagnostic information provided to the employer, the fact remains in which way and to what the employer may use such information, and, in turn, may lead to potential abuse as the employer is not of medical background and his understanding of the information may lead to abuse towards the employee.

The Vice-Chair: If I may interrupt, could we keep the discussions in the audience down a little please, so that the members of the committee can hear. Thank you.

Mr Dhooma: At present time, under section 71 of the Workers' Compensation Act, it states that the employer can access medical information from the file which is in the hands of the Workers' Compensation Board. Again, we question what the reasons are in having the employee provide to the employer diagnostic medical information.

Our recommendations would be to have the employee inform his or her employer of medical limitations. The fact that medical documentation be provided in full is of little or no use to the employer in providing suitable accommodations in the workplace.

The wording "consenting to" should be amended to read, "the employee may inform," thus eliminating further abuse on the part of the employer. Surely, the rights of a worker would be freely affected by the employer by having this implemented into the bill the way it stands, and we feel that these rights should be protected.

Confidentiality between the injured worker and his or her attending physician is no longer valid under these conditions, and again, the rights of an individual are severely violated by the employer. Although the purpose of the act is to help an injured worker, the reading of the act must have these changes made in order to clarify the act when read.

In regard to vocational rehabilitation, the rights of an injured worker to be accommodated by the employer under section 54 also cannot be overlooked. The Workers' Compensation Board is set up in order to assist an injured worker to be accommodated in his or her place of employment. Such obligations by the employer should be made mandatory and be enforced by the WCB. This section of the act is to assist the injured worker, not to assist the employer in streamlining its workplace at the expense of an injured worker.

If it is found that the worker cannot be accommodated due to an injury, then his or her right to retraining shall be provided by the WCB with no input from the employer. The manner in which the section of this bill reads clearly gives the employer more leverage in which to discriminate against an employee, leading up to termination. The obligation by the employer to either accommodate the injured worker or become more responsible for some type of retraining program should be fulfilled and not placed on the back of the WCB, releasing an employer's obligations to the employee who has become injured in the workplace. Is it not the role set forth by WCB to assist the employee once again and not at the discretion of his or her employer? The way in which this section reads is that once again, it seems to us, we have the tail wagging the horse.

In conclusion, I'm sure that we're well aware of the way the economy stands, mainly with free trade resulting in plant closures and layoffs, especially here in Ontario. We must now focus our attention on what is left for the injured workers of this province. But more misery and grief to not only the injured workers but also to the families of such injured workers would be detrimental to all workers.

It is once again important that all rights of the injured workers be protected as they are clearly at a disadvantage when it comes to injuries at the workplace. Thank you for your time and consideration. I would like Mr Robert London to present his story.

1730

Mr Robert London: I'd like to thank the committee for allowing us to present a short brief to them. I was going to go over my brief but seeing that it's been well documented with everybody who was here, maybe I'll just express a little bit of what actually happened to me with the board.

First, I will say, though, that the Injured Workers Association of Guelph backs the network 100% with regard to Bill 165.

In 1979, I was injured. I worked from 1979 to 1984. I was in transport. Taking a lot of drugs and driving a rig on a highway isn't a very bright idea for anybody to do, but I had just bought a house in 1975 and I didn't want to lose everything. I'm here to tell you that in 1984 I lost it anyway. The house, I sold for \$32,000. I lost \$40,000. I had bought a new car in 1982. They came and towed it out of the driveway while my wife was going to work, purse and everything.

I was operated on in 1985. In 1986, the doctor at the time here in Toronto drafted a letter to the board suggesting that I would never work under any capacity again, and I should be compensated accordingly. The board, probably a week later, gave me a phone call and said that the UMA had gone over my file and that I was capable of returning to some sort of employment and as of that day, my benefits would be cut to 50%, temporary partial.

I was reading the same letter that the doctor had given me, and my family physician, the surgeon and I asked the adjudicator at that end, "Well, are you reading the same things I'm reading?" He said, "Probably I am, but this is how it works." The problem that I had with that was that I was injured on a job, lost everything that I had worked for, and I did work from 1953 until 1985. Everybody that I approached just were amazed, "No, it don't happen."

I decided I would look into this. It happens, every day, to a person who is injured on the job, whether he's in construction, a labourer, whether he's—I'll use a politician. We could use that too. Every one of us is forced, if we're not a schedule 2 employer, to take compensation.

The compensation board, I guess, was set up by Mr Justice Meredith to protect my rights as an injured worker and to give me benefits until I was capable of going back to pre-existing earnings, not to cut me off, which they did.

I co-founded this organization in Guelph, and one of the main reasons I did was because of being on the other

end of the stick in a system that just does not work. It doesn't work for injured workers. I don't know who it's working for but it sure isn't working for me, which I will tell you.

At the time of my cutoff to 50%, my medication and my wife's medication was \$800 a month. I couldn't afford to buy the medication: my wife's heart pills, I take a couple of puffers. I developed a lung disorder after surgery. I just couldn't believe they would do this to me, but they did and caused great stress.

The part of losing everything really bothered me, it even bothers me today, because I do have sons, grandchildren that I leave nothing to. When I die, compensation dies with me. My wife has nothing that she can fall back on but social assistance, if there's any that's going to be paid for her.

I could probably keep going on and on and on. I do help injured workers and my story is not unique in any way, shape or form. Everyone that I know can tell the same story, realizing that this bill is going to do absolutely nothing. If you think \$50 a week is going to give somebody something, well, think again. The economy out there keeps going up and up and up; \$50 is nothing. Just to pass me my medication, a puffer, it costs me \$10.95. My Ventolin went from \$5.65 to \$23 right now. My Pulmicort went from \$89 to \$135. I don't have a drug plan, and I know injured workers don't have drug plans. The company they work for, it stops. Everything stops, and you're left paying everything out of your pocket. If you have a pre-existing condition, you still have to take the medication and you still have to pay for it out of your own pocket, so \$50 is absolutely nothing. Thank you.

Mr Mahoney: Thanks very much. I have, Mr London, your document here. You've included your concerns. I think you just made it clear. I was going to ask you, but you just made it clear that you are opposed to this bill.

Mr London: Yes, I am.

Mr Mahoney: Okay. I see the CAW, Local 1917 in Guelph has issued a letter. They refer to the PLMAC agreement on workers' compensation. They refer to the de-indexation and to the financial responsibility section. I'm assuming they're opposed to the bill, because you've included this letter here, and yet we've heard from Local 444 in London, we heard from the national office today of the CAW, which have suggested that—

An emergency alarm sounded.

Mr Mahoney: We're now hearing from someone else. *Interjection.*

Mr Mahoney: Yes, that's right. Actually, it should have been the real thing when I was speaking. It should have been the real thing.

The Vice-Chair: We will try to proceed.

Mr Mahoney: They'll repeat that about six times and drive us all crazy.

I'm trying to get some clear indication from organized labour and from injured workers as to whether or not they support this bill. They've confused the issue, many of them. The CAW local in London submitted 17

changes—17 out of 25 sections of the bill that they totally disagreed with—and then went on to say they supported the bill. It's causing some concern, because there are definitely problems for injured workers in this bill, there are problems for organized labour, there are problems for management, and yet we continue to see people saying they want the bill passed whether it's amended or not. Do you have any comments or thoughts on that?

Mr London: I can't speak for Local 1917, but I will say that Mr Fairfull did give me the letter and I did put it in with my brief. Again, probably some of the CAWs are not voting with the main part of their union; I don't know. Again, this is just my own opinion.

Mr Mahoney: I guess maybe that's the problem—there are splits all over the place on this thing. Thanks for that.

Mr Dhooma, your comments about the right to retraining provided by WCB with no input from the employer: I'm assuming that this employer, at this stage, when you're going for retraining—you're an injured worker—still there's a possibility that you would go back to work with that same employer. Is that the case, in your understanding?

Mr Dhooma: What I was trying to say is that at times when a worker is in a training process, the worker would interfere with that training process.

Mr Mahoney: The employer would interfere.

Mr Dhooma: That's what I mean, yes.

Mr Mahoney: But what I'm wondering is—you say that there should be no input by the employer—if there's a retraining program—you work for ABC company and you're injured. You go to the board and you can't do the job you had before that you were injured at but the company's willing to take in some form of modified work and you have to go to a retraining program. Would it not make sense that this employer should have something to say or some involvement or some contribution to the retraining program since they're going to rehire you in some capacity?

Mr Dhooma: The board does have work site analysts and they have personnel who can help in any retraining. They could oversee it. The board is there to be the go-between each party, so it would have all this information on retraining, as far as I'm concerned.

Mr Arnott: Thank you very much for coming in today. I'm looking at Mr Fairfull's letter as well from the CAW. He indicates that he appears to be against the insertion of the words "financial responsibility" and "accountability" in the purpose clause. Would you share that view as well, that those words should not be in the purpose clause?

Mr Dhooma: I agree with that, yes, I do, because I think that you can't put a price on injuries that might come up in the future. Are you going to say, no, you shouldn't have any more benefits going out, yet these injuries are occurring? That's the reason why I would agree with that.

Mr Arnott: It's very difficult to put a price on an individual—

Mr Dhooma: That's right. You can't put a price on an injury.

Mr Arnott: —or a life or an injury. But do you realize that there's a financial problem at the Workers' Compensation Board right now?

1740

Mr Dhooma: That's what you hear all the time, about the financial costs and everything, but what about the financial costs the injured workers have had to bear all these years? How come no one's talking about that? I'm getting sick and tired of hearing about all these financial costs going on, but what about all these workers? Look at Mr London. He lost his house and he lost his car. Who's going to give all that back to him? That's what I have to say on that.

Mrs Witmer: In the presentation that you made, Mr Dhooma, you expressed your concern regarding the impact of changing the legislation. You recommend here, "The wording of 'consenting to' should be amended to read, 'The employee may inform,'" and that of course is concerning the medical documentation. What if the employee chooses not to make the employer aware of his ability to return to work and the type of work that he or she is able to do?

Mr Dhooma: Isn't the WCB there to provide that help to the injured worker, to get that injured worker back to work? This is an approved claim I'm talking about, per se. It's an approved claim. There's vocational rehabilitation involved. Wouldn't they do this kind of work?

Mrs Witmer: Why do you object to the employer having access to the medical information?

Mr Dhooma: Because with the employer I am with, we've had serious problems all the way up to the privacy commission federally. To have this in the act now is going to give them more leverage and we'll have to go to WCAT and do sections 71 and 23. To me, as far as I'm concerned, they don't need any more leverage. There's enough leverage. Injured workers don't have the kind of leverage employers have, as far as I'm concerned.

Mr Hope: A few questions: Would you be in favour of the Friedland formula with no \$200-a-month increase to the pensioners? Would you be in favour of that type of a proposal?

Mr Dhooma: No, I would not be in favour of that.

Mr Hope: Okay. That's the Liberal position. Would you be in favour of a reduction to 85% or 80% in benefit levels to workers' compensation claims?

Mr Dhooma: No, I would not.

Mr Hope: That's the Conservative approach.

Mr Mahoney: Of course not.

Mr Hope: Would you be in favour of taking \$294 million from the experience rating program and diverting that to improvements and getting rid of the Friedland formula?

Mr Dhooma: No, I'm not in favour of the experience rating because it's a kickback. I think if all that money were put back into the board, it would bring some of that deficit down that the employers are talking about. All

they are doing is getting money back and that money should be going back to injured workers. The employers have a right to have a safe workplace and they should keep that safe. They shouldn't be paid for it.

Mr Hope: So what you're saying is, for the years that the business community, through the Conservative government, never got its rightful increases in workers' compensation, which created an unfunded liability by the Conservatives, by the changes the Liberals did and with Bill 162 and—

Mr Mahoney: You're here to save us.

Mr Hope: —its revenue-neutral approach, you believe that the \$294 million that is paid back to corporations for actually upholding the law of this province—

Mr Dhooma: That's correct, yes.

Mr Hope: —by creating safe workplaces should be removed in order to make sure that the Friedland formula is removed from injured workers and to make sure that we can deal with the unfunded liability through their money? Is that what you're saying?

Mr Mahoney: Close enough.

Mr Dhooma: Yes, I'd have to agree with you.

Mr Hope: Okay. Thank you.

Mr Dhooma: And again, if—

Interjections.

Mr Hope: Don't let me put words in your mouth.

Mr Dhooma: No, no.

Interjections.

Mr Dhooma: I'd like to say—

Mr Hope: I've listened to Mr Mahoney talk about getting into his DeLorean and driving away, and we know how many DeLoreans are on the street today, as he goes back to the future.

Mr Mahoney: I don't have a DeLorean. What the hell are you talking about?

Mr Hope: The thing is, what I'm trying to do is express a viewpoint. I mean, the business community—

Mr Mahoney: Get on your horse and ride home.

Mr Hope: —is coming in here and saying, "Attack the injured workers."

Mr Dhooma: No, that's wrong. In fact, the business community should police its own community. We have a lot of companies that have gone bankrupt or left the country and left them holding the bag and that's not right. They should police themselves. They keep on pointing their finger at injured workers, which is wrong, absolutely wrong.

The Vice-Chair: On behalf of the committee, I'd like to thank the Canadian Union of Postal Workers, Local 560, for its presentation.

Interjection: Are you in favour of Bill 162? No?

Interjection: When are you going to tear down that one?

The Vice-Chair: Order, order.

Mr Mahoney: No, he's not in favour of Bill 165. That's what he said. We are here on 165, aren't we, Mr Chairman?

The Vice-Chair: We are indeed. We're on the public hearings.

Mr Mahoney: Just checking. I know that a lot of the government members are living in the past. I was just checking.

The Vice-Chair: If we could keep some control for another 20 minutes.

EMMA OSSO

The Vice-Chair: I'd like to call forward our last presenter of the afternoon, Emma Osso. Good afternoon and welcome to the committee. Just a reminder, you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd leave a little time for questions and comments. Could you please identify yourself for the record and proceed.

Mrs Emma Osso: My name is Emma Osso, and with me is Orlando Buonastella, who is going to help me if I have trouble with my English. I live in Whitby.

Mrs Osso: I will begin speaking to you about my experience as an injured worker. I have a claim for traumatic hearing loss.

In 1976, I started working for a furniture manufacturer and I was exposed to a very noisy environment. In the early 1980s, I started experiencing problems with my hearing. Then, in 1985, I had the misfortune of hitting my ear against the sharp edge of my sewing machine while lifting some material at work. The combination of extensive exposure to noise and the traumatic ear accident have caused a lot of problems for me.

Last year, for example, I was off work for six months because I had lost my sense of balance. The doctor took me off because I was at risk of further injuring myself and my fellow workers. He also ordered me not to drive and to avoid being by myself. I had a tendency to fall very easily, and indeed I fell on the floor on several occasions. I collected UI benefits instead of WC because I could not handle the additional stress of having to deal with the Workers' Compensation Board.

In the early 1980s, when I started experiencing hearing loss, my family doctor sent me to a specialist. When this specialist learned that my hearing loss was work-related, he kept putting me off about the seriousness of my problem. This continued for over 10 years. My hearing continued to worsen over this time. I was constantly asking people to repeat themselves. Co-workers and friends teased me about being deaf, but no one realized the seriousness or depth of the problem. I was constantly embarrassed about not being able to hear. If people were laughing or clapping, I would follow along even though I had not heard the joke or remark. When my children were in school, I would proudly go to their plays and concerts, but I could not hear what they were saying. I tried reading lips, but unfortunately that did not work.

In 1992, I could not take it any more. My family doctor finally referred me to another specialist. Once again, this specialist could not help me, so I was referred to another one. I sit before you today with a hearing loss in my right ear of 35% and in my left ear of 30%. I have had two operations on my ears and now I wear hearing aids, but nothing can help the ringing and buzzing in my

ears, or the dizziness. A lot of nights, I only get a couple of hours of sleep because the ringing and the pain keep me awake.

I'm angry. If my first specialist back in the early 1980s hadn't been intimidated by the WCB, maybe my hearing loss could have been stopped at that point. Maybe I would not have lost all those years with my family. Maybe I would not have suffered all the humiliation and the pain.

Employers seem to think that injured workers make a lot of money. I would never wish for anyone to be injured and go on WCB. For all my loss of hearing, loss of balance and loss of enjoyment of life, I only received a 9% pain and suffering award. It took the WCB over two years to decide on this award. The grand total of this cash settlement was \$3,700. To make matters even worse, WCB ignored all my years of suffering. They started my claim in 1992, even though my exposure to noise began in 1976 and my hearing loss began in the early 1980s.

1750

I know of injured workers who are very proud and will not go to the WCB for help, even though their problems are work-related. I knew an injured worker who committed suicide after he had an accident on the job. He was a very close friend of ours. His employer did not help him. WCB would not help him. He felt he had no alternative.

Injured workers are not treated fairly. Work-related injuries cause workers to lose their families, their homes and their dignity. Many have to turn to welfare so their families will have food on the table and a roof over their heads.

I wish that employers who come before you to ask you to cut our compensation benefits would stop to think what they are doing. They are hurting real people. They are hurting people who worked honestly, proudly and worked hard so that their companies and their country would develop. Injured workers do not need cutbacks. We need security and fair compensation.

Now I want to tell you what I feel about Bill 165. Bill 165 wants to cut the cost-of-living increases to injured workers. This is wrong. Why should our compensation be cut by inflation year after year? You would not like to see your pension reduced by the cost of living each year. We survive on very small pensions and these are not retirement pensions. They are pensions that we rely on for many years before our retirement age.

Bill 165 will give a \$200 increase to a group of older injured workers under the old pension system. This increase should not depend on the older workers' supplement. Many injured workers who deserve this supplement never applied for it, for ignorance or language problems. Also, this increase must be on the pension, not on the supplement. If it is dependent on receiving the supplement, the \$200 will be lost if the supplement is cut off when it's reviewed.

I'm speaking to you on behalf of all injured workers. Please do not leave us stranded. Please let us keep our homes, our families and our pride. Don't make us go on welfare. All we want is fair compensation for our work-

related injuries. We injured workers do not want to get rich. What we want is simple. We want to live in dignity and to be able to provide a good home for our families, our children, who are the future of this country.

To this government I'd like say that injured workers need your support as much as you need ours. Please don't let us down.

Mrs Witmer: Thank you very much for your presentation, Emma. I think you've outlined what we've heard so many times. There's been injustice in the past, and I guess the question that I continue to struggle with is, how do you address the injustice of the past? I think unfortunately many of the people who were injured are immigrants like yourself or people who don't have the language skills. I say that because my parents are also immigrants and they didn't have the language skills, so I know what I'm talking about, and there was a hesitation to approach any authority, whether it be WCB, and to ask and to get the help that's necessary. As a result, many people are suffering in the same way that you are.

I don't know what the answer is. Do you know what the answer is? How do you solve the injustice of the past?

Mrs Osso: Personally, I think the WCB is a bunch of incompetent people. Last year, in one day I got four phone calls from four different departments. One was sending me to therapy, one was sending me to the specialist, things which are not related with my hearing.

Mrs Witmer: Yes. So there's a total lack of coordination as far as dealing with your case?

Mrs Osso: Yes. They don't know what they're doing. You know, they find this name, they phone and they don't know what they are talking about. To me, that's what happened because four people phoned me the same day and they didn't know they were talking about my hearing. What was the purpose? I don't know. Just one told me, "You have your hearing aid." The other three, one was sending me to the therapy—

Mrs Witmer: For what? Well, those are the types of problems that we, as MPPs, hear about on a regular basis. I know my staff works very diligently to try to get through to somebody at the WCB who will listen to the injured workers. It's a very frustrating process and unfortunately this bill isn't going to address the mismanagement at the board and make it more efficient and more responsive to people as yourself. I guess, personally, that concerns me. I appreciate your coming forward today.

Ms Murdock: I know Mr Wood wants to ask something too so I'm just going to—I just did a quick survey down here and three of us are injured workers who have put in—I haven't put in my claims to the board, but the other two have. One was an employer, one was in the British system and the other one was a self-employed farmer, so I think we have an understanding.

I know when I worked with Elie Martel and Shelley, before getting elected myself—the invisible injuries such as yours are the ones we have the hardest time with in terms of getting benefits recognized. Mrs Witmer is absolutely right. Bill 165 doesn't address that at all. I

don't think it was the intent of Bill 165 to address that, so it's a whole different issue. Also, the invisible injuries, because you don't see a hand missing or because you don't see somebody on crutches or whatever, then the awards are also very low. I know it's a whole area that has to be looked at.

Mrs Osso: Can I interrupt you?

Mrs Murdock: Certainly.

Mrs Osso: I understand there are all kinds of injuries, but I'll tell you one thing. Being the way I am now and what I was before, it seems to me I'm mutilated. My arms, everything is gone, because when you talk—even now when you were talking I had to read your lips, with my hearing aids, and that is something. You know how many times when people are talking, you go, "Pardon me?" the first time, "Pardon me?" the second time and "Pardon me?" the third time. That's the worst pain that could happen, and I do have pain, even in my ears.

Ms Murdock: I understand that, and you're right. It is something that has to change.

Mr Wood: Thank you very much, Emma, for sharing your experience on the hearing loss that you've had on the job. We've heard presentations from injured workers and the Latin American association talking about being offered jobs and only phantom jobs are there, and the other worker presenting before was saying that he lost his home and he lost everything because of a phantom job he was offered and there was nothing there for him. Were you offered another job where there would be less noise that you'd be able to do in the workplace?

Mrs Osso: Right now, even though they give me another job, it would do no good.

Mr Wood: Okay.

Mrs Osso: I have lost 30% and 35% of my hearing, so even if the roof is coming down I wouldn't know. I know something's happening, but no noise to me.

Mr Mahoney: Thank you as well on behalf of our caucus. Do you see anything in Bill 165 that will help your situation or will help people like you in the future?

Mrs Osso: I don't think I got you. Can you just—

Mr Mahoney: Let me ask it another way, I guess.

Mrs Osso: Yes, please. Keep in mind I'm a factory worker. I'm not a politician.

Mr Mahoney: No, no. You don't have to be smart to do this job. Trust me.

Interjection: Very well said.

Mr Mahoney: I've not been injured on the job yet, but if I have many more days like today it might happen, I think.

Mrs Osso: You are very lucky.

Mr Mahoney: Yes, that's right.

Ms Murdock: MPPs aren't covered.

Mr Mahoney: I know we're not. That's right.

Do you support Bill 165 in its present form? Do you want it passed the way it is now?

Mrs Osso: No.

Mr Mahoney: Thank you very much.

The Vice-Chair: I'd like to thank you also, Emma, for your contribution to the committee today. I thank the indulgence of all the committee members today, getting us through a long schedule. This committee stands adjourned until 10 am tomorrow.

The committee adjourned at 1801.



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Phillips, Gerry (Scarborough-Agincourt L) for Mr Offer

Rizzo, Tony (Oakwood ND) for Mr Huget

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Staff / Personnel:

Fenson, Avrum, research officer, Legislative Research Service

Richmond, Jerry, research officer, Legislative Research Service

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(Hansard)**

Thursday 8 September 1994

**Journal
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Thursday 8 September 1994

Jeudi 8 septembre 1994

*The committee met at 1002 in room 151.*WORKERS' COMPENSATION
AND OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL
ET LA LOI SUR LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

INDUSTRIAL ACCIDENT VICTIMS
GROUP OF ONTARIO

The Vice-Chair (Mr Mike Cooper): Today will be our last day on the public hearings on Bill 165. I'd like to call forward our first presenters. Good morning and welcome to the committee. Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee would appreciate it if you'd leave a little time for questions and comments. As soon as you're ready, could you please identify yourself for the record and then proceed.

Mr Sebastian Spano: Thank you very much. My name is Sebastian Spano. I'm with the Industrial Accident Victims Group of Ontario, a legal clinic that represents injured workers. I will be making a presentation which is part of a joint presentation of the Union of Injured Workers and the Toronto Injured Workers' Advocacy Group, so this is a supplement in a sense to that presentation.

In my presentation I will be discussing the formula for eliminating full indexation of benefits and replacing it with the Friedland formula. I will also discuss a major aspect of the bill that is not dealt with, an issue that has not been dealt with in the bill, and that's the issue of the future economic loss benefits, or deeming.

You've certainly heard from various groups and a number of individuals and read in numerous reports of the Ministry of Labour that the formula that is being proposed to eliminate full indexation of benefits, known as the Friedland formula, is a reasonable alternative to full indexation as measured by the consumer price index. I'm sure the members are familiar with the Friedland formula, but what the bill proposes to do on indexation is to remove full automatic indexation pegged to the consumer price index and replace it with a formula that takes the CPI, the consumer price index, as its starting point, takes three quarters of that amount, subtracts 1%,

and you're left with the result. Of course, there is a cap of 4%, so at no point can the indexation factor exceed 4%.

As I've said, you've heard that this method of indexing benefits is a reasonable alternative and its impact will not be too hard and it's a reasonable thing that injured workers can take. We're here to show you that this is not the case at all, that a lot of what you've heard, a lot of the statements and claims are totally unfounded. We're here to produce some information and some evidence to you to show you the full impact of the Friedland formula on workers' benefits.

You've also heard that the workers' compensation system can no longer afford full indexation, that the board does not have the revenues or the resources to maintain this. This too is a myth, and I will discuss that today.

I'd like to begin with trying to get a sense of what exactly indexation is, and there are a lot of misunderstandings about what it is. It's often treated as a means to increase workers' pensions. Well, that's not the case at all. It certainly is not that. It is simply a means to maintain workers' benefits at the levels at which they were initially awarded. It's simply a means of preventing the pensions from slipping further as price inflation goes up, because the value of a pension is not its nominal, monetary value; it's the value in terms of what it can purchase. This is what is often typically overlooked in all the discussion about indexation.

There have been certainly numerous studies done on why we need indexation for workers' compensation pensioners, but I think one of the best was done by Professor Paul Weiler in a study that was commissioned by the Ontario government in 1980, Reshaping Workers' Compensation for Ontario. The study was published in 1980. Professor Weiler provides really an exhaustive analysis on the significance of indexation and what it really is. I'd like to briefly quote from Professor Weiler's report. He had this to say on the notion of indexation as merely an adjustment and not an increase:

"In addressing this issue as a matter of principle, there should be no question about the entitlement of workers' compensation claimants and pensioners to inflation adjustments as a matter of right...." If you're reading from the text, it's at page 4 in our submission. "We must keep clearly in mind that no real improvements and benefits are at issue here. We do no more than avoid an erosion in real income levels we earlier awarded to workers' compensation pensioners...."

"This is how the problem looks from the point of view of fairness to the injured worker. But we have been told again and again that Ontario business and the Ontario economy cannot afford the cost. This fear is completely unjustified. The explanation is implicit in the very notion of inflation, which consists of changes in money values, not real values."

The second claim that you've heard about and that's been raised about indexation is that it's a drain on the resources of the Workers' Compensation Board. Again, this is unfounded. In Professor Weiler's study, he canvassed this point as well. In trying to understand why it is unfounded, I think I'll just briefly go into how the board collects revenues and how they increase.

There are two principal sources for the board's revenues. One is assessments on employer payrolls; the second is return on investments. What has been pointed out is that both sources increase in response to price inflation as well, so there's sort of a balancing effect. Inflation goes up, indexation goes up on workers' benefits, but there's also price inflation on the board's revenues. So there's clearly a match between what's being paid out to workers in the form of indexation and what they are taking in from the board.

If you look in the board's own annual report, particularly the 1993 annual report, the board provided some background notes on what it does with its money, and it said that it seeks to get a rate of return in excess of 3% over inflation—3% in excess of inflation. So they're taking in 3% in excess of inflation just on their investments, plus employer payrolls are going up simply because of wages that go up. As you know, it's the assessable payroll that the board uses to take in its revenues, so as these go up with whatever changes in wages, so does the board's revenues from these sources.

1010 Professor Weiler also noted this effect. He wrote, and this is at page 5:

"Just as inflation produces the need for adjustment of workers' compensation benefits to monetary inflation in order to provide distributive justice to the injured worker (again, recall, not to increase the real value of the benefit), so also inflation generates the financial wherewithal for the compensation system to pay for that adjustment. It does so through the impact of price inflation on the WCB revenues, either from the assessment of current employer payrolls or from the rate of return on its investment portfolio." I think that Professor Weiler is one of the best authorities on this subject.

I'd like to talk now about a particular effect of the Friedland formula on FEL benefits. As you know, FEL benefits are benefits that are paid by the board to compensate for the loss of future earnings. The board makes an estimate and projects that the worker will lose certain benefits as a result—rather, they'll lose earnings power as a result of their accident, over time. Not only does taking indexation away reduce the actual purchasing power of the FEL benefit, but under the Friedland formula it results also in reduction in the nominal value of the FEL itself. So it's a double effect on the FEL awards.

We've produced some tables and some graphs in appendix 1 of our submission.

How much time do I have?

The Vice-Chair: Ten minutes left.

Mr Spano: I think I'll just show you on the overhead exactly what happens. If you look, I've chosen here a 4% inflation rate and deemed wages at approximately the same rate as inflation. We've sort of tracked the future economic loss benefit over time—

Mrs Joan M. Fawcett (Northumberland): Excuse me. Is that the same one as on page 2?

Mr Spano: No, it's not, actually.

Mrs Fawcett: It's a different one?

Mr Spano: I'll direct you to that one. It's in appendix 1. It's not numbered.

Ms Sharon Murdock (Sudbury): It says 4% of CPI.

Mr Spano: As I said, the graph tracks the future economic loss monthly benefit over approximately a five-year term. We've taken four case examples. One is a future economic loss award based on full indexation and 90% of net average earnings, we've taken the Friedland formula at 90% of net average earnings, and we've also used two other examples, using 80% and 85% of net average earnings, both at full indexation.

You can see in the graph the line that goes down. This is the effect of Friedland on a future economic loss award. Initially, it tends to sort of rise somewhat, but at the second review the deemed wages seem to—what happens, I guess, has to do with the calculation of the award. What the board do is they use projected earnings, and they'll use whatever the market rates of earnings are at the time of the review. Now, those actually will be going up, whereas the indexation factor under Friedland is going to be capped or it's going to be reduced. This is what produces the downward trend.

In this example, really there's a 23% drop by the fifth year when you compare the Friedland-indexed FEL award with the fully indexed FEL award.

We use another example. If inflation were to go higher, the drop is even more significant. As you see, this particular line right here is the Friedland-indexed FEL. That's the fully indexed FEL.

You can see that difference there. What that produces is that after five years, the difference between the fully indexed future economic loss award and the Friedland-indexed award

is 55%. That's a significant drop. We are not even counting the erosion of the purchasing power on that benefit itself.

I would like to make another point about, I guess, the process of how the ministry chose this particular formula and why it chose this particular means of compensating or indexing benefits. I think the justification was that somehow it's used in retirement benefit packages that are negotiated in collective agreements between labour and management. This is a totally absurd justification for taking away full indexation. This is certainly not a good model. We have to remember that workers' compensation is a wage replacement scheme; it is not a retirement

income scheme. So, really, there's nothing solid to back that up.

Simply in terms of equity, again, there is really no good reason why workers' compensation pensioners or injured workers should be treated any differently or should be discriminated against by being given much less. For instance, retirement pensions and a whole bunch of other wage replacement schemes and even retirement schemes are fully indexed, such as the old age pension benefits. There's no reason why workers' compensation benefits should be excluded.

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I'd just like to talk a little bit about deeming. When we talk about deeming what we mean is the process the board uses to, in a sense, guess as to what the worker is likely to earn into the future. Some have called it crystal-ball-gazing, and in some ways it is; it's certainly not a scientific process. We want to point out that in fact there has been no reform in this bill on the question of compensation for loss of future earnings.

The experience of the last few years is that the system does not work to adequately compensate workers. The board has produced its own studies. A recent study produced by the board's policy branch—it's a study of recipients of the award—showed that at the time of the first review of the award essentially roughly 45% of the sample were still unemployed at the time of the first review. They were not adequately compensated at the time of that review either and many of those who were working had wages well below their pre-injury earnings.

Our recommendation then, in closing, is that we disagree totally with eliminating full indexation.

The Vice-Chair: You've just gone over your time, so on behalf of this committee, I'd like to thank the Industrial Accident Victims Group of Ontario for the presentation this afternoon.

ONTARIO HOME BUILDERS' ASSOCIATION

The Vice-Chair: I'd like to call forward our next presenters, from the Ontario Home Builders' Association. Good morning and welcome to the committee.

Mr Ward Campbell: Good morning. My name is Ward Campbell and I am currently the first vice-president of the Ontario Home Builders' Association. Next month, I will become the president of the association.

With me this morning is Byron Scott, who is the chair of the Ontario Home Builders' health and safety/WCB committee. I will provide you some background on the OHBA and Byron will provide more detailed comments on the draft legislation itself.

The Ontario Home Builders' Association is the voice of the residential construction industry, representing 3,700 member companies which are organized into 36 local associations across the province. In fact, last week you heard from one of our local associations, the Ottawa-Carleton Home Builders' Association. Collectively, our members produce over 80% of the province's new housing. The value of residential construction work in Ontario accounts for \$15 billion of the total \$32 billion in construction.

OHBA places a high priority on health and safety

issues, and we have an active health and safety WCB committee which meets on a regular basis. We wanted to go one step further, however, to ensure that we were getting appropriate feedback on a geographical basis. A local health and safety contact network was formed to help facilitate the flow of information to our 36 local associations as well as get vital feedback on a range of issues. The benefits of this network are evident now as a number of local associations have formed committees on health and safety.

As I'm sure you are aware, the majority of our members are small companies that build a few homes each year. These building and renovation contractors and their trades are very closely tied to their local communities. Frequently for these smaller firms, the owner is also out there onsite working as a supervisor or a labourer. Of course, we also represent much larger building companies. For everyone, the cost of WCB represents a growing and significant proportion of their costs.

In 1994 the standard assessment rate for group 764, which is residential construction, increased from \$5.95 per \$100 of payroll to \$7.16, an increase of over 20%. The magnitude of this increase had a direct impact on the bottom lines of many residential building firms and is disconcerting considering the great strides that have been made to further improve the safety performance of our industry.

The significance of our industry is illustrated by the assessable payroll of rate group 764. It alone was \$633 million in 1993. Other rate groups also include our members, such as the mechanical contractors, masonry contractors, roofers, inside finishers, siding firms and so on, and these groups represent several hundreds of millions of dollars in assessable payroll.

I believe everyone in this room would hold the view that the workers' compensation system in this province is in dire need of meaningful reform. Many groups were pleased that the Premier recognized this fact when he appointed his labour-management advisory committee to recommend changes. The main point of contention at this stage is whether this bill is the appropriate remedy. OHBA along with other groups has come to the conclusion that Bill 165 should be withdrawn and that a new, more financially sound piece of legislation should be drafted. A clause-by-clause tinkering of this bill would not only illustrate political expediency, but would be a great disservice to the workers and employers of Ontario.

I'm going to now turn over the microphone to Byron Scott.

Mr Byron Scott: As Mr Campbell has stated, OHBA does not intend to critique the entire bill, as other business associations have already given detailed comments to the committee. We do however wish to emphasize our strongly held views on a couple of issues and to provide the members with a context for our position. In particular, we wish to focus on vocational rehabilitation and the CAD-7 experience rating program. But first, let's look at the safety performance of the construction industry.

Great strides are being made in safety performance in the residential construction industry. Data collected by the WCB and tabulated by the Ministry of Labour and the

Construction Safety Association of Ontario show that lost-time injury frequency has dropped significantly in the past few years. Appended to the brief are tables showing the reductions in compensable injuries between 1965 and 1992.

While these data do not show the performance of the residential sector exclusively, we can confirm, as noted previously, that our sector has accounted for a high proportion of the construction activity, particularly during the recessionary period. The graph shows the significant improvements that have been made to accident frequency during the 1980s and into the 1990s. In addition, the construction industry is performing well compared to other industries, such as public administration, which we would presume are much less risky industries. You can see this in the appendix. An explanation of this remarkable improvement will be provided under the CAD-7 section.

1030

One thing that has become clear to us is that we do not need new WCB legislation to make an improvement in site safety. A far more effective way to reduce potential accidents and fatalities is to instill the safety ethic in each and every individual who has anything to do with the construction process, from the builder to the subcontractor to the individual tradesperson on the job site.

OHBA is a proponent of the existing internal responsibility system that involves onsite health and safety committees and promoting accident prevention. In other words, the workplace parties are in the best position to identify safety problems. Both workers and employers must share the responsibility for occupational health and safety and take appropriate action onsite in achieving the safety objectives.

Vocational rehabilitation: OHBA is supportive of the thinking behind the vocational rehabilitation and early return to work. Assisting an injured worker back to meaningful employment in a timely manner is a worthy and admirable goal. It is difficult in the construction industry, however, to achieve this objective, simply because of the nature of construction and the small size of the majority of firms. We are disappointed with the overall thrust of Bill 165's section 53 amendments. It does not recognize these inherent difficulties and appears to take an autocratic approach with employers.

As you have heard, in the construction industry there are impediments to implementing return-to-work programs because of the project duration, the cyclical nature of the industry, trade jurisdictions and so on. For example, an injured framer may not even be ready to return to work until the construction project is complete. In addition, modified work will not always be available for a specific tradesperson, and it could be added that alternative work will not be appropriate in every circumstance. It appears that Bill 165 has not taken account of these characteristics.

On July 11, OHBA met with Mr Jim Thomas while he was still deputy minister and we proposed an idea that appeared to be well received. The proposal centred around a credit system whereby a firm that has employment for a WCB-identified worker would receive a re-

employment credit to offset possible future situations where alternative work might not be available. We believe this credit system of employing a worker that is not necessarily injured on your job site would help to solve situations where return to work is not always possible.

As we indicated, the ministry appeared to be receptive to a system that had re-employment obligations but where there was not necessarily direct linkage between the injured worker and the firm where the injury occurred. We trust that the committee recognizes that the proposed amendments contained in Bill 165 would be somewhat impractical for our industry.

Another idea we have links the concern that many business groups have with the 90% benefit level in Ontario. We would suggest first that the benefit level be reduced to help control expenditures. Perhaps even a level of 80% would act as an incentive for workers to return to work in a timely fashion. In cases where return to work is not possible for medical reasons in the medium term—for example, six months—we feel that the benefit level could then be raised to, say, 85%.

OHBA contends that this would be a financially responsible return-to-work policy which has elements of incentive and fairness. Indeed, other provincial jurisdictions have lowered benefit levels. This would be one way to help ensure that there will be funds to cover injured workers in the future. Recent events have shown this to be successful in New Brunswick.

Turning now to the CAD-7 experience rating program, as you know, the CAD-7 program was intended to promote accident prevention in construction by raising assessments on high-injury/severity firms and rewarding companies with good safety records. CSAO's 1993 annual report points out that CAD-7 "has played a major role in reducing Ontario's lost-time injury rate." The graph that we referred to earlier clearly demonstrates the positive effect of the CAD-7 program in our industry. Lost-time injury frequency has declined from a level of 50 injuries per 100,000 man-hours in the mid-1970s to 25.6 in 1993.

There has been criticism of CAD-7 because of the off-balances which have resulted; that is, overall the rebates have been greater than the surcharges. This is partially due to the fact that the projections made by the board of expected cost and frequency have not always been accurate. We are not criticizing the board for this, because the formula is based, in large part, on accident costs measured in previous years. A major reason for the off-balance lies in the fact that the construction industry has made such rapid and significant improvements in reducing the injury frequency. If the majority of the firms had to pay surcharges under CAD-7, then there would be real cause for concern, because accident frequency would be trending in the wrong direction.

The addition of section 103.1 ignores the importance of incentives to the construction industry. We believe that fine-tuning CAD-7 may be appropriate, but do not view this section as a means to enhance performance. No formula is provided which would give the board any guidance regarding weighting of criteria for refunds or

surcharges. The measurement of the listed criteria would be subjective, discretionary and focus solely on the employer; for example, health and safety practices and programs, vocational rehabilitation practices and programs, practices and programs to assist workers to return to work and the nebulous "other matters." Does this include performance?

For example, as we have indicated, many OHBA members are small firms, and these companies will often subcontract work for various stages of the construction process. The majority of the small firms in this province do not have vocational rehabilitation programs. If the board places a great deal of weight on this factor in determining whether a refund or a surcharge is available, then many companies that otherwise have good safety records will be penalized unjustly.

OHBA is fully supportive of WCB's existing CAD-7 experience rating program. I should stress that this statement is based on feedback we have had from OHBA members. Many of these members obviously receive rebates from the board, but I did have a conversation this summer with a member who is in a surcharge position and still indicates the rebate potential is the more saleable incentive. This member has implemented a corporate safety policy and generally is taking an enlightened approach to safety.

The improvements made were influenced by the ability to receive a rebate. It should be noted that this is typical of what happened in the early days of CAD-7, and now many more employers have effective safety programs. We would contend that firms in a surcharge position recognize the incentive in the program but would be more effectual in a positive atmosphere.

A performance-based CAD-7 must be maintained if the objective is to continue to reduce accidents and injuries. The uniqueness of the construction industry and the diversity of firms in terms of size, type and activities demand that performance-based programs be the dominant factor in evaluating firms.

The construction workplace parties are responding to the current performance-based incentives without the need for excessive enforcement. Consultation with competent health and safety delivery organizations such as the Construction Safety Association and the efforts of the Ministry of Labour have resulted in expanded prevention awareness, better work procedures and follow-through to check performance results. We feel confident that our industry will make further improvements in accident prevention if legislative guidance is practical and fair.

Little information is contained in the bill on how section 103.1 would work in practice, but we are certain that it would be incredibly cumbersome, that it would be subjective and that it would not be as powerful as the performance-based approach we currently have. For this reason alone, OHBA feels Bill 165 is inappropriate. We believe that CAD-7 should be a balanced system, but we also believe overall the WCB is better off in a negative, off-balance position than a positive one.

We wish to recognize improvements at WCB. All too often one hears only criticism about the Workers' Compensation Board, whether it be the construction of the

new office building or abuse in the system. However, there are improvements being made that unfortunately are often overlooked in the highly politicized world of the Ontario Workers' Compensation Board.

OHBA's health and safety committee maintains a liaison with the board's construction integrated service unit. We are provided with updates on ISU's activities and we are pleased by the progress being made to reduce the duration of claims. This spirit of cooperation has also encouraged better employer case management among our members.

Communications: The intent of amendments to subsection 51(2) should be to enhance communication between the physician and the employer. Improved communication between the various parties involved in an injury is a positive goal. Unfortunately, the employer has frequently not been part of the process, and this has hindered return-to-work objectives. We are concerned that Bill 165 still does not overcome this problem.

We are pleased that the OMA has prepared a paper which examines the role of the physician in return to work. Better communications are necessary to facilitate better and more timely return to work. For example, the doctor may not be aware of modified work opportunities. We view communication links as critically important to facilitating better and more timely decisions.

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The purpose clause must contain reference to financial responsibility to ensure potential expansions to entitlement are not passed by the board without due consideration to financial consequences. The board has a responsibility to manage the workers' compensation system in a sound financial manner, just as any other board of directors endeavours to do.

If no controls on placed on the system, it will become even more difficult to reduce the unfunded liability. If the WCB collapses under the weight of its own debt, then both workers and employers will suffer. There will be nothing left in the pot to pay for the existing and future compensation claims.

Equally distressing would be the consequences for Ontario's competitive and financial wellbeing. The spectre of US-built modular homes rolling into Ontario is not one that I wish to contemplate.

In conclusion, it is most unfortunate the Premier's business representatives on the labour-management advisory committee were not given more weight. Bill 165 is not based on an agreement between labour and management, and this alone is compelling reason to withdraw the bill and draft a new one that will ensure the future financial soundness of the WCB.

The system loses credibility when office workers who never go near a construction site are assessed at the same rate as carpenters. Those who can be fleeing the system and opting for private protection which provides 24-hour coverage for fewer dollars. A system with a growing unfunded liability is not going to attract these people back. It is time to implement meaningful reform, but we are not confident that Bill 165 will achieve this goal.

Thank you for your attention and hearing our views.

Mr Gerry Phillips (Scarborough-Agincourt): I appreciate the thoughtful brief, and I'll ask two questions because we may only get one question.

The first is, I see in the deputy minister's letter to you that he indicates that there is a recognition the construction industry may be different. The first question would be, have you had any recent conversation around your proposal on the back-to-work provisions?

The second one is, there's been some concern on the experience rating that there's perhaps an undue pressure put on companies to not report accidents and I'm wondering if you can provide the committee with any evidence one way or another on whether that's something we should be concerned with or whether there's evidence that we really should set that concern aside.

Mr Scott: On the first question, I don't believe that we've had an opportunity to talk further with—

Mr Andy Manahan: I've spoken to April, actually, last week. They are looking at it still.

Mr Scott: Mr Manahan is our staff member. He's got some later information. But certainly in committee we haven't been able to address that further.

But probably more importantly, the effect of CAD-7 on whether you bring a person back to work the next day or whether you delay the return to work, I think the important part of it is that the incentive is there to be on top of the situation. Have a modified work program in place before an injury takes place, and then you can work quickly to inform the medical practitioner of exactly what you have available and he can make a knowledgeable decision as to whether that worker should be allowed to come back to work.

We all know, and it's been stated to you in other presentations, that when people get into the system for any length of time, it's more and more difficult to get them back out. It's human nature, and we recognize it, and we're trying to get to a point where there's confidence on both sides—all three sides, really: the worker, the employer and the physician—that we are all working in the best interests of getting the worker to a healthy situation.

Mrs Elizabeth Witmer (Waterloo North): Thank you very much for your presentation. I'm really pleased to see the emphasis on the cooperation in the workplace with all of the partners, and I hope the minister does give very serious consideration to your re-employment credit.

My question is this: In your conclusion you state, "Those who can are fleeing the system, and opting for private protection...." Are you aware of a number of businesses that are making that choice?

Mr Scott: It's not businesses as large numbers of people. It's obviously the independent operators that are doing it. They have the option of taking coverage with the board or going elsewhere.

In the construction industry, the bottom line counts, and if they can save literally thousands of dollars for equivalent coverage, they're going to do so. It's only human nature again. What we want to do is, we want to restore the confidence in the board and get more people participating. Therefore, we can spread the cost of those

unfortunate situations that do occur.

Mr Len Wood (Cochrane North): I commend you on your presentation. There's no doubt about it that you have a dialogue going with the Ministry of Labour and the Deputy Minister of Labour that the construction industry and home builders are different and that dialogue is continuing.

I just want to do a follow-up on page 7, on your conclusion. You're saying that the cost of private insurance is cheaper than WCB. We had presentations yesterday saying that there's less coverage and it's more expensive in the United States than what it is in Ontario by a large amount of dollars. I just want to know if you want to comment on that. What type of coverage would you get compared to WCB?

Mr Scott: I don't have the figures in front of me, but I know from my experience in the field, and I literally walk around the projects and I'm asking people do they have protection, because I don't want anybody working on my job site without protection, and the common response is that if I start insisting on WCB, they start complaining that it's far more expensive for equivalent coverage. Obviously you have to compare apples to apples. But I don't have the figures to substantiate it. I have talked to one insurance company that works closely with the association, and they confirm that they can provide equivalent coverage for less money.

Interjection.

Mr Scott: Yes, you do have that problem.

The Vice-Chair: On behalf of this committee I'd like to thank the Ontario Home Builders' Association for their presentation to the committee this morning.

ONTARIO MEDICAL ASSOCIATION

The Vice-Chair: I'd like to call forward our next presenters, from the Ontario Medical Association. Good morning and welcome to the committee.

Dr John Gray: I'm Dr John Gray, chair of the board of directors of the Ontario Medical Association. I'm also a family physician in Peterborough. Our submission is in several parts. I will be addressing the return to work and voluntary reporting of workplace injuries.

With me is Dr Lily Cheung. Dr Cheung is the chair of the section on occupational environmental medicine of the OMA. She's also a specialist in internal medicine and in occupational medicine. She will be addressing vocational rehabilitation and board duties.

Also with me is Dr Robert MacBride, who is a member of the subcommittee of the OMA's medical care and practice committee and a member of the executive of the section on occupational environmental medicine. Dr MacBride will be addressing timely return-to-work programs.

I understand that our written submission has been distributed by the clerk this morning. I hope you all have copies, and I'd like to ask Dr Cheung to start.

Dr Lily Cheung: Good morning. The Ontario Medical Association would like to thank the standing committee for the opportunity for us to present our submission.

The Ontario Medical Association represents over

20,000 physicians in Ontario and has as its mission, "To serve the medical profession and the people of Ontario in the pursuit of good health and excellence in health care." Occupational health and safety is becoming an important issue in this mandate. Every day, doctors in Ontario, including general and family physicians, occupational health physicians and other specialist physicians, are working with other health professionals to ensure good health in the workplace. Physicians do this through prevention programs, through rehabilitation when necessary, through facilitation of ill or injured workers' successful re-entry into the workplace and through the promotion of wellness both off and on the workplace site.

The OMA welcomed the government's announcement in May that it would be reviewing and proposing changes to the workers' compensation system in Ontario. We as a profession are pleased to work collaboratively with the government and the Workers' Compensation Board as well as employer and labour groups to improve the workers' compensation system in Ontario.

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In this brief, the OMA will comment only on those amendments in Bill 165 to the Workers' Compensation Act and the Occupational Health and Safety Act with which the OMA has particular concerns. We look forward to participating in a more comprehensive review of the system under the royal commission on workers' compensation.

With regard to vocational rehabilitation, referred to in subsection 9(5) of the bill, Bill 165 proposes to substitute subsection 53(1) of the Workers' Compensation Act to ensure that the board, the worker, the employer and the worker's physician are all involved in designing and providing for a vocational rehabilitation program for the worker.

The OMA recommends that in addition to consulting with the worker, employer and worker's physician that, wherever available, the board also consult with the appropriate joint health and safety committee or workers' representative and members of the occupational health service team in the course of designing and providing a vocational rehabilitation program for the worker.

By the way, the committee members may not be aware of the fact that occupational medicine has been a recognized specialty by the Royal College of Physicians and Surgeons of Canada for some time, but we are only one member of the occupational health service team, which can include all occupational health professionals, including people like occupational health nurses, occupational hygienists, safety professionals, occupational therapists, physiotherapists, ergonomists and others, as well as all other specialist physicians. Being knowledgeable about the workplace and workplace hazards, these people are positioned in a way that they can achieve the changes required to ensure the appropriate and safe return of the employee to the workplace.

With regard to board duties, referred to in subsection 15(3), the OMA supports the monitoring by the compensation board of developments in understanding the relationship between work, injury, occupational disease and workers' compensation so that generally accepted

advances in health sciences and related disciplines are appropriately reflected in benefits, services, programs and policies.

However, the OMA has concerns regarding how the board will be informed in this regard. The OMA recommends that appropriate scientific guidelines be employed in the choice of literature to be used by the board and that good science only should form the basis of the board's policy decisions.

For example, I think the board has taken an appropriate step in funding the Institute for Work and Health for the study of soft-tissue injuries and community clinics. The Institute for Work and Health was previously named the Workers' Compensation Institute.

On the issue of board duties, the OMA joins other organizations in expressing concern that successful rehabilitation and return-to-work programs do not operate in an adversarial environment. The board itself, at its most senior levels—now it could be a bipartite board, as suggested—must set a positive and constructive tone to be reflected in the workplace.

Dr Gray will continue our submission.

Dr Gray: There are two areas of concern to physicians that we have addressed in our submission and which I would like to highlight. I will be departing from the actual written text, rather, addressing these issues, specifically the role of the physician in the initial reporting of workplace injuries to the Workers' Compensation Board and the difficulty in communicating medical information directly to employers to assist in timely return to work. I should like to address the initial reporting of workplace injuries first.

As a senior member of the joint OMA-workers' compensation liaison committee, I became aware of what appears to be a disturbing and increasing trend, namely, a patient who presents to his or her physician with what clearly appears to be a work-related injury yet requests the physician not to report to the board, apparently at the behest of the employer.

Faced with a choice either to report against the patient's instructions or to ignore the apparent workplace circumstances, the physician has a terrible dilemma. The consequences of either choice are outlined in our submission, and in fact, in partial response to the question earlier from Mr Phillips, the OMA section on general and family practice recently undertook a survey of its members in an attempt to quantify the magnitude of the problem, and I would like to share the results of this survey with the committee.

Members were asked the question whether or not in the previous six months a patient had requested that they not report to the Workers' Compensation Board an apparent work-related injury. Of those who responded, 51% had indeed encountered such a request in the past six months and 47% had not. Of those who responded, the frequency of requests was as follows: In the past six months, one to three requests, 36%; four to six requests, 12%; more than six requests, 6%.

As things stand now, the vast majority of physicians likely would honour a patient's request not to report out

of consideration for the confidentiality provisions of the Medicine Act. In the long run, however, to follow this course of action is likely not in the patient's best interests, to say nothing of the possible legal consequences for employers who ignore their legal obligation to report to the board, as well as the inappropriate physician billings to the OHIP globe which should appropriately be charged to the Workers' Compensation Board.

The OMA thus requests that government include in Bill 165 a provision which would ensure that physicians who voluntarily report to the board that a patient may have been injured at work be protected from incurring any legal liability, and the suggestion is amplified in our written submission.

To address the second issue, namely, the role of physicians in communicating directly with employers, we could perhaps facilitate an explanation of our concerns by way of a hypothetical case scenario.

I believe all parties involved—namely, employers, workers, the board itself and physicians—agree that currently there are significant delays in the transmission from workers' compensation to employers of the information regarding the fitness of their employees to return to work, either in an unmodified or modified work environment. Physicians are prepared to cooperate with the timely flow of this information, although, once again, confidentiality concerns are very real. The OMA is pleased that the proposed addition of subsection (2) to section 51 of the Workers' Compensation Act recognizes that the consent of the worker is required before any medical information can be forwarded directly to employers. However, as outlined in our submission, there will be infrequent circumstances in which the physician will be placed in a difficult position.

Consider the hypothetical case of Joseph, who is a 45-year-old, otherwise healthy crane operator for a medium-sized industry. He presents to his family doctor with a two-month history of occasional blackouts. Further investigation, including blood work, heart testing, EEG and CAT scan reveals that an underlying seizure disorder, a form of epilepsy, is the cause of the blackouts. The family doctor starts Joseph on an appropriate anti-convulsant medication and arranges a referral to a neurologist. As is her obligation under the Highway Traffic Act, she advises Joseph that she will be reporting his condition to the Department of Transport. Aware that Joseph also operates a crane at work, she in addition offers to work with plant medical services in arranging for a modified work environment that would be safe both for Joseph and his fellow employees. She is somewhat taken aback when Joseph refuses to allow this information to be shared with the employer because Joseph is afraid he'll lose his job.

The doctor is placed in an even more uncomfortable position when three months later the employer requests the family doctor to conduct a periodic medical examination and again Joseph refuses to allow the doctor to communicate her advice to the employer. What is she to do?

The OMA does not have a firm recommendation for government regarding this latter situation. Undoubtedly,

situations like the one I have described are infrequent, but when they occur, they are problematic for all parties concerned. The recommendations of the Krever commission have been ignored for over 10 years, and the specific recommendations are in fact highlighted in a footnote in our submission. The OMA hopes that this might in fact be the forum to review this problem again.

I'd now like to ask Dr MacBride to address the OMA's timely return-to-work programs.

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Dr Robert MacBride: The Ontario Medical Association has developed a position paper, which is in general support of the return-to-work directions of Bill 165. The OMA strongly supports legislative amendments designed to facilitate timely and successful return-to-work programs in the workplace.

In March 1994 the Ontario Medical Association approved a policy regarding timely return-to-work programs and the role of the primary care physician, designed to assist in reducing absenteeism due to injury or illness through the early return to work of employees.

The policy recommends that the traditional passive model of disability management by way of medical certification be replaced with a new, proactive, timely return-to-work model in which the employee and employer negotiate a plan for returning to work using objective input from the physicians.

To be successful, return-to-work programs must be founded on goodwill and trust so that motivated employees who may have a medical impairment with objective limitations or restrictions can re-enter a supportive workplace with flexible, innovative and productive work options whenever these are feasible.

In essence, the essential impact of that paper is to remove the physician from a sometimes arbitrary role of certifying absence and return to work, much like a truant officer, and recognize the physician as a resource, a source of objective information regarding abilities, limitations and restrictions. This avoids the delay in return to work while physicians, who may have only limited information about a particular workplace, await something called "full medical recovery," missing an opportunity for the rehabilitative benefits of early return to work when a medical problem has stabilized.

Thank you for your attention. I should just add one comment, that the OMA position paper is appended to the submission for the reference of the committee.

Dr Gray: We would be pleased to answer any questions.

Mrs Witmer: Thank you very much for your presentation. You've now clarified the point that has been raised by some of the presenters, and the fact is that not all claims are being identified as they should be and appropriately recognized as WCB claims. Why is this happening? You indicated the number of doctors who had responded "yes" in the last six months. Why is this request being made?

Dr Gray: Well, I can tell you why physicians may in fact not be identifying the claims appropriately. I can't tell you why the requests are being made. That's really

between the employee and his or her employer. Physicians, though, are hamstrung at the moment by legislation in terms of appropriately identifying the claim to the board.

Under the current workers' compensation legislation, as we understand it, the employer is obliged to report such knowledge of a workplace injury to the board, but the physician is in fact under no such legal obligation. The physician is, however, captured by the Medicine Act and the confidentiality provisions, and if an employee specifically requests that the physician not report, the physician risks, say, a charge of professional misconduct in a college disciplinary hearing if he ignores that employee's request.

Mrs Witmer: Well, I hope that issue will be addressed. That's a very, very serious problem.

Mr Tony Rizzo (Oakwood): Maybe the question's not 100% related to Bill 165, but I think it's important for us to know if the Ontario Medical Association ever considered sending representatives to the Workers' Compensation Board board of directors. Were you invited or were you consulted?

Dr Gray: We have not been formally consulted. We are aware there's been some discussion about the constitution of the board generally. I think if the OMA were offered a place at that table, that would be a decision for our board of directors to make. At the moment, we're not aware of any formal offer.

Mr Rizzo: What is your personal opinion? Would it be a positive move in the direction of getting more of your people involved in the decision-making process?

Dr Gray: I don't think my personal opinion is relevant, sir. It really would be a decision for our board to make.

Mr Rizzo: There was no decision or discussion at the level of your board?

Dr Gray: There has not been.

Mr Steven W. Mahoney (Mississauga West): I think you've been very helpful and responsible in analysing the problems in your position. As you probably know, in my document I envision you having a seat on the board of the WCB because I think your profession is key to resolving many of the problems that exist.

I just want to ask you, however, under the voc rehab part of your presentation you suggest that the board should also consult, in addition to the worker's employer and worker's physician, with the joint health and safety committee or workers' rep and members of the occupational health service team.

You go on, at the bottom of page 2 of your submission, to identify various health professions that are part of that health service team. We've had some of them here before us suggesting that we need amendments to the health profession regulation act to allow them to act in a somewhat independent way to provide voc rehab or services or return to work or identify other job opportunities, all of that kind of thing. Do you support that kind of loosening up of the current regulations?

Dr Cheung: Do you mean that they work independently, not as a team?

Mr Mahoney: No, they would work as a team. In other words, the physiotherapists would be able to work independently on their specific thing, not necessarily under the direction of a physician, but they would be able to provide their services as part of being defined as part of the health regulation act so that they'd have the freedom to work within the WCB, not to exclude physicians, but to—they are saying to us that they're restricted from acting without having the specific direction of a physician.

Dr Gray: If I could comment briefly, certainly the Regulated Health Professions Amendment Act has liberalized considerably the scope of practice of many of the health professions that you're talking about. It would be my view that if it's within the current RHPA scope of practice of one of those professions to exercise some independent judgement and it can allow that judgement to be communicated, I would have no objection.

If you're asking, should the scope of practice be widened, it's a hypothetical question that's difficult to answer without really knowing specifically what's envisioned. I think a lot of the health professions now have a more liberal scope of practice than they had before, and in fact it may be just a matter of going back and looking at what they're permitted to do under the new RHPA, much of which is new for them now.

The Vice-Chair: On behalf of this committee, I'd like to thank the Ontario Medical Association for its presentation to the committee this morning.

UNITED STEELWORKERS OF AMERICA, LOCAL 1005

The Vice-Chair: I'd like to call forward our next presenters, from the United Steelworkers of America, Local 1005. Good morning and welcome to the committee.

Mr Alan Hodder: Thank you very much on behalf of Local 1005, United Steelworkers of America. My name is Alan Hodder. I'm the benefits chairperson for Local 1005, United Steelworkers. On my right is Mr Rob Butler, a committee person also within Local 1005. Mr Butler will start out on the preamble of our presentation, and then I will close off in closing comments.

Mr Rob Butler: Good morning. Local 1005, United Steelworkers of America, is very pleased to have this opportunity to present our views and comments in regard to the government's intent to amend the Workers' Compensation Act and the Occupational Health and Safety Act through the proposed changes as contained in Bill 165.

Local 1005, United Steelworkers of America, represents 5,600 members at Stelco Hilton works and is affiliated to the United Steelworkers of America with approximately 60,000 members in the province of Ontario. Our local has a very active benefits committee, with a full-time chairperson and four committee persons dealing with all forms of government as it relates to benefits, at an annual cost of approximately \$250,000 in lost-time wages.

Workers' compensation makes up approximately 70% of our case load and we make representation from initial entitlement to WCAT on behalf of our membership.

Local 1005, United Steelworkers of America, is no stranger to the WCB or government, as we have participated in many forums through consultation, whether it be the Minna-Majesky task force on rehabilitation and service delivery, submissions on Bill 101, or as a very vocal opponent to Bill 162. Primarily, it is the latter which we are most concerned about, as the realities of Bill 162 have now become our most recent nightmares.

Although it is the historic right of government to introduce legislative changes to the act, we feel that it is imperative to review some of these changes and their impact on workers to date.

In 1985, the government of the day passed Bill 101. Primarily, one of the greatest gains for workers in the province was the birth of an independent appeals tribunal, commonly known as WCAT. WCAT was mandated through Bill 101 to be at arm's length of the WCB and have the final say in the appeal process, yet we know now that this has not occurred.

We state this for the very simple reason that the board, through section 93 of the act, has sole jurisdiction as it pertains to the matter of compensation. In fact, the board has used its discretionary powers on two occasions in reviewing WCAT decisions and refused to implement them in their entirety ie, decision 915 and decision 72.

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Bill 101 has also changed the calculation of benefits which a worker would receive from 75% of gross to 90% of net and enacted the indexing formula at 100% of the consumer price index, CPI. The government, by introducing Bill 165, forms a base to change this and we refer to the present proposal of implementing the Friedland formula. We will speak to this in the latter part of our brief and our views on this subject matter.

In 1989, we saw the implementation and passage of Bill 162, which in our opinion was the most retrogressive piece of legislation ever faced by workers in this province since the inception of workers' compensation in 1914.

Bill 162 clearly set the stage for two classes of workers in this province: those who were injured pre-Bill 162 and those who were injured post-Bill 162. It is our opinion that Bill 165 will only add to another class of workers for those who fall under the new proposed legislation. We state this for the simple fact that workers who receive benefits under Bill 165 will no longer receive 100% indexing tied to the CPI unless they meet the criteria as set out by the bill itself.

The Liberal government, when passing Bill 162, hung its hat on the fact that workers injured after January 1, 1990, would have a greater right to re-employment based on the language as contained in section 54 of the act. Yet reality clearly shows that approximately 78% of those workers remain unemployed and in reality are living below the poverty line based on meagre FEL awards after the board has deemed them capable of alternate employment or phantom jobs. The legislative intent, as promised, failed because of two very simple reasons, number one being the fact that section 54 is only an obligation; number two, continuing entitlement to benefit, ie, temporary partial disability, is paid as a result of subsection

54(13) for a maximum period of one year.

Another selling factor that the government promised upon implementation was the fact that older workers who were injured prior to Bill 162 would be guaranteed vocational rehabilitation services. We know in fact that this did not occur, as many of these same workers remain unemployed and never really received true vocational rehabilitation, the reason being, why would the board spend money and resources to rehabilitate this class of workers when many are older and have been out of the workforce for so long, with no transferable skills to make them competitive in today's global economy? Another reason is that many of these same workers, when injured, were at low-level income based on pre-accident earnings and it would make no sense to either retrain them or integrate them back into society.

Bill 162, in reality, when introduced, was supposed to be cost-neutral, but in fact has become cost-ineffective for all the reasons which we have previously stated. By this, we mean that 78% of workers remain unemployed due to the employers failing their obligation under section 54 of the act. Clearly, the government's intent, through Bill 162, was to attack that of benefits for workers and reduce the unfunded liability through cost-saving measures expected from the now dual award system of FEL and NEL. Clearly the unfunded liability is not the responsibility of the workers and benefits should not be addressed as a means of reduction, but in fact the focus must be on, number one, how the board administers its services and, number two, how employers maintain their respective workplaces.

Truly addressing these concerns through a royal commission study will guarantee a clear directive which the board or government must act upon if the workers' compensation system is to remain viable in the foreseeable future. We must state for the record that our only concern with a royal commission is, once the commission has achieved its mandate of whether there is a better mousetrap, whether it will be binding upon the government which is expected to be elected within the same time frame.

At this point, I'd like to turn the mike over to Mr Hodder.

Mr Hodder: This brings us now to our concerns and views based on the present legislative changes which are being proposed through Bill 165. Although we believe Bill 165 is only a Band-Aid solution to a long-term problem, we support the bill in principle, but with reservations as it is currently written.

We do support the fact that the government will add a \$200 increase to the pensions of those who are most in need, that being those who were injured previous to Bill 162. We are concerned by the fact, though, that many of these workers may not qualify based on the proposed criteria as they apply to the supplement issue. It is our fear that a number of workers may fall through the cracks, those being older workers who are over age 65 and did not qualify for a supplement through either subsection 135(4), pre-Bill 162, or subsection 147(4), as contained in Bill 162, and those who were in receipt of a subsection 45(7) supplement prior to July 1989. Clearly,

those who receive this income must have the increase affixed to lifetime pensions and the supplement issue must only be used as a mechanism to target those individuals.

Local 1005 also supports the position of a bipartite board of directors, as truly this process should not be a fear factor for both parties. Clearly, history will show that employers and workers have achieved and overcome many hurdles and obstacles when dealing in this forum.

We are, however, concerned by the fact that the employer community has now placed an iron curtain to the process by reneging on the commitment of workers' compensation reform. We will remind the committee that the employer community has had full participation on this issue and refer the committee to the findings as contained in the Premier's Labour-Management Advisory Council report.

It is clear that the employers of this province would rather circumvent the process and not participate, in the hope that a new government, if elected, will succumb to their agenda, that being the attack of benefits for workers as opposed to addressing the real agenda of reform.

Having stated the above, another concern which Local 1005, United Steelworkers of America, perceives is the language as contained in subsection 51(2) of the act, section 8 of Bill 165, which provides for prescribed medical information. Clearly, we see employers abusing the statutory intent by not implementing a cooperative return-to-work program.

It is our submission that the only information the attending physician must supply to determine this question is that of non-diagnostic medical information. By this we propose a simple test, that being: Is the worker partially disabled, and if so, what are the restrictions which need to be accommodated, and for how long?

Local 1005, United Steelworkers of America, and Stelco Inc Hilton works have a long-standing relationship as it pertains to re-employment of injured workers, with a 99% success rate of returning workers back to pre-accident employment with accommodation or alternate employment with accommodation. We have attached to our brief an appendix 1 which will deal with our specifics that pertain to Bill 165 and the amendments which we propose.

Bill 165, in our opinion, will not change the statistical data which implies that 78% of workers under Bill 162 remain unemployed as a result of section 54 of the act. It is our submission that we believe Bill 165 certainly takes a step in the right direction by amending sections 53 and 54 of the act, but does not go far enough. Until such time that the statutory right guarantees "mandatory," versus "obligatory," these numbers will increase.

One of the fundamental flaws in this approach is the simple fact that benefits, once determined as an employment issue, switch from clause 37(2)(b) of the act and administratively revert to section 54 for payment purposes. Many employers would rather pay the penalty as contained in section 54, as opposed to meeting the statutory obligation when compared to the feasibility of accommodation or modifying employment. The board

justifies the employer stance by imposing a fine, if any, and rejecting any further entitlement to rehabilitation after one year. Thus the worker is left out in the cold with no benefits or moneys.

Bill 165 must be worded to make section 54 of the act mandatory, and benefits should not cease for the worker once the employer fails the obligation. We agree with the fact that those employers who do have real programs which re-employ workers and who are reducing frequency and severity in their respective workplaces should receive rebates as it pertains to NEER.

There has been much discussion during these hearings about the issue of experience rating and the impact Bill 165 will have on an employer's ability to access assessment rebates. To fully understand employers' concerns, let us investigate the facts.

Experience rating in Ontario was introduced in 1984. It's purpose was to shift a greater degree of the responsibility for workers' compensation costs from the industry rate group as a whole to the particular employers actually incurring the injury costs.

The original intent of experience rating was to serve as an incentive for employers to reduce both the number of workers injured and the length of lost time by encouraging the employer to establish and maintain safety and prevention programs and to assist the worker to return to work as soon as possible. Experience rating programs ultimately make a firm responsible for its own injury costs to varying degrees. Employers with claims costs above the industry average must pay a surcharge or an increase in their assessment rates. Firms with costs below the industry average receive rebates or refunds or a lower assessment rate. The adjustment to the employer's rate is based on the employer's past claims experience.

It is important to know that this program was not designed to increase the assessment revenue but to rather more fairly allocate costs among larger employers and encourage appropriate safety initiatives.

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Although the intent to encourage return to work and health and safety initiatives was accepted by labour, the experience has been to date that, while employers have continued to access rebates, in too many cases the rebates have been achieved in a dubious manner.

Instead of implementing or improving return to work and health and safety programs, many employers have found it easier to manage claim costs with a different focus. In order to reduce their accident frequency and duration ie, costs, employers have coerced employees into not claiming workers' compensation, engaged in the hiding of claims, frivolously appealed initial entitlement and/or further benefits, avoided employing accident-prone employees, and spent enormous resources on accessing claim cost relief from the second injury enhancement fund, otherwise known as SIEF. By offering bonuses and monetary incentives to employees under the guise of reducing accidents, they have instead used coworker peer pressure to reduce the reporting of accidents.

By using these methods, many employers have been

able to master the means of achieving maximum rebates.

Although it was originally anticipated that refunds and surcharges would balance out, in practice, perhaps because of some of the aforementioned employer abuse, refunds have exceeded surcharges by as high as a ratio of three to one.

For example, in 1985, \$13.6 million in refunds were paid out as opposed to \$8.9 million in surcharges being assessed. In 1993, a whopping \$282 million was refunded while only \$95 million was surcharged. The difference in moneys paid out versus moneys collected is called the off balance. Since its inception, the experience rating system has witnessed a total off balance of approximately \$500 million.

The business community has stressed over and over again the urgency of financial accountability, yet employers have not entertained discussions on the merits of experience rating in terms of fiscally responsible programs. Unless reforms are made to this present system, experience rating will continue to exist as nothing more than an employer cash cow rather than the accident prevention incentive it was intended to be.

Bill 165 attempts to rectify the occurrences of employer abuse by amending the procedure in which an employer can be subject to either a rebate or a surcharge. Accident frequency and duration will continue to be the cornerstone of the rebate-surcharge determination. However, these two components will be augmented by additional criteria.

The amount of rebate surcharge will include consideration of the employer's health and safety practices, vocational rehabilitation practices, return to work programs, and any other programs the board may consider appropriate. In other words, changes to an employer's statutory assessment will be influenced by the degree to which they demonstrate their earnest desire to prevent and rehabilitate injuries.

So why are the employers worried about the amendments to experience rating? The answer is that good employers, those that already are conscientious about health and safety and re-employment, have nothing to worry about. In fact, many may even notice an increase to their rebate due to the new formula. However, employers who in past years have assessed rebates only through hiding and contesting claims will need to change their practices or observe a negative impact on their assessment monies.

The cries we hear about the unfair audits by the WCB police and complaints of unnecessary bureaucratic red tape are nothing short of a smokescreen. Other jurisdictions in Canada have proven that if financial incentives are tied to improvements in health and safety programs, accident prevention will become a priority.

Alberta and the Yukon are two examples of provinces that require an employer to undergo comprehensive evaluations of health and safety programs before the allowance of rebates. Employers must remember that one of the fundamental principles of workers' compensation was that it be funded collectively by employers. Experience rating is a system designed to reward employers that

make the workplace safer and healthier for its employees. It was not designed to benefit those who merely appear to be conscientious.

Consider the following analogy. In Toronto, a home owner has a statutory obligation to keep their sidewalk clear of snow. Failure to comply with this bylaw results in a fine that is over and above the taxes already paid on their property. However, if a home owner consistently complies with the law, although they receive no penalty, they are unable to access any type of rebate. Why should an individual experience a financial reward for merely fulfilling their legal obligation?

If the financial situation of the WCB system is truly in dire straits, as suggested by almost every employer presentation we have heard, perhaps the government should consider eliminating the merit system of experience rating. If not the government, certainly the new financial responsibility clause should force the board of directors to investigate the cancellation of this incentive program that will result in savings equalling hundreds of millions of dollars annually.

On second thought, maybe employers will agree that the proposed changes to experience rating aren't so bad after all.

Local 1005, United Steelworkers of America, states emphatically that we do not agree with Bill 165 adopting the Friedland formula as it pertains to the indexing of benefits. This should not be used as means for a cash cow to reduce the unfunded liability and the inflated costs attached to it.

Clearly, this will be part of the question that the royal commission must address when it reports back to the government on future funding.

If benefits for injured workers are to be reduced, then clearly the cap must be reduced. The CPI is the only true measure by which injured workers can have their earnings protected against inflation, as statistics will show that many remain unemployed and living on fixed incomes which are below the poverty line.

In conclusion, we urge the government not to cave in to the demands of the employer community, as their fears are unjust. The unfunded liability should not be the central focus in this debate, as workers continue to be at the mercy of the system as it currently exists. We will remind the government of the historic compromise achieved in 1914, that being fair and equitable compensation for injuries which arise out of and in the course of employment. Truly, along the way there has been a breakdown of the original intent, yet it should not be the workers who are compromised as a result of this failure. Again, we look forward to addressing the real issue of change, and clearly the only forum for this venue should be the royal commission.

We look forward to any comments or questions this committee may have, based on our submission.

The Vice-Chair: You've gone over your time so there won't be any time for questions or comments, but on behalf of this committee, I'd like to thank the United Steelworkers of America, Local 1005, for its presentation to the committee this morning.

CP RAIL SYSTEM

The Vice-Chair: I'd like to call forward our next presenters from the CP Rail System. Good morning and welcome to the committee.

Mr John Taylor: My name is John Taylor. I'm director-general, government and industry affairs for CP Rail System. With me is Jean-Louis Masse, assistant vice-president, risk management and actuarial services for CP Rail; Jim Madge, solicitor, Canadian Pacific legal services; and Charles Sheehan, general claims agent for CP Rail System. We're also accompanied by John Cuthbertson, who is a safety and loss control officer for CP Rail System.

Believe me, we're not trying to overwhelm people with numbers, we're just trying to bring along the breadth of areas that are involved within our company.

CP Rail would like to thank the standing committee on resources development for this opportunity to comment on Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act.

As a federally regulated company, with railway operations in Ontario and most other provinces of Canada, CP Rail has a major stake in ensuring that Ontario workers' compensation regime is effective, manageable and stable for all parties with an interest in the system: workers, employers, the government of Ontario and in fact, we believe, all citizens of this province.

The status quo is not acceptable. CP Rail is very concerned about the stability and financial integrity of the workers' compensation program in Ontario. According to the WCB's 1994 second quarter report, as at June 30, 1994, the WCB's unfunded liability stood at approximately \$11.7 billion. In the first six months of 1994 alone it grew by \$181 million, a staggering increase of about \$1 million a day.

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The business steering committee indicated in its written submission to this committee that without real reform in the system, the unfunded liability will stand at \$31 billion by the year 2014. The business caucus of the Premier's Labour-Management Advisory Committee, in its presentation of November 17, 1993, to Premier Rae predicted that the unfunded liability could in fact soar to as high as \$52 billion by the year 2014.

CP Rail System agrees with the vice-chair of administration and chief executive officer of the WCB, Mr Kenneth Copeland, when he stated in the WCB 1994 second quarter report that, "The status quo is not acceptable and the system must be improved."

The general effects of Bill 165: By Premier Rae's estimate contained in his letter dated July 18, 1994, to the president of the Board of Trade of Metropolitan Toronto, Bill 165 is expected to have the effect of reducing the projected \$31-billion unfunded liability as of the year 2014 by \$18 billion. Assuming that estimate to be accurate, this would result in an unfunded liability of approximately \$13 billion by the year 2014 or a \$1.3-billion increase from today's level. This would represent a slowing of the rate of growth of the unfunded liability

and as such could be regarded as a step in the right direction.

However, we urge the government to pursue even greater financial responsibility by working towards absolute reductions of the unfunded liability.

Should the correct level of the unfunded liability by the year 2014 be instead the PLMAC prediction of \$52 billion, it becomes obvious that additional measures will be necessary in the not too far distant future in order to check the escalating liabilities.

Of course, these are all only estimates; perhaps best- and worst-case scenarios. This company submits that any debt level within such a range is unacceptable and potentially disastrous. No one can predict the future with certainty. However, it's evident that a regular valuation and monitoring process should be embodied in the system in order for the true total costs of the program to be known to all interested parties before practices or benefit provisions are modified. The system's financial responsibility and accountability must be re-established. Only by implementing a system that is sustainable and cost-effective will a true solution to this urgent problem be found.

CP Rail is a concerned stakeholder. As an employer of approximately 5,400 Ontarians and as a company engaged in a service industry integral to the vitality of the production and distribution sectors of the Ontario economy at large, we are especially interested in Ontario's ability to attract, retain and support a strong industrial base. The companies engaging in business in Ontario are CP Rail System's customers. If they are negatively affected, we are negatively affected.

For the protection of the workers' compensation system as well as the economy of Ontario, real and effective changes are urgently needed. Bill 165 proposes some measures which are steps in the right direction. Other measures, however, appear incomplete and do not go far enough. Others need reconsideration. Our specific comments on the various provisions in Bill 165 follow.

Financial responsibility and accountability: CP Rail System recognizes that section 12 of Bill 165 proposes that the WCB board of directors act in a financially responsible and accountable manner in the performance of its duties. We agree that financial responsibility and accountability are very important controls necessary for effective management. However, Bill 165 does not go far enough. Financial responsibility and accountability should be extended to include the executive officers of both the WCB and the Workers' Compensation Appeals Tribunal. It is also our strong belief that nothing would be lost and much would be gained if the same principles of financial responsibility and accountability were also entrenched in the purposes provision.

Section 1 of Bill 165 proposes to add a new section to the Workers' Compensation Act setting out the purposes of the act. It is submitted that this proposed amendment is inadequate in that it fails to provide for the workers' compensation system to be administered in a financially responsible and accountable manner in keeping with the best interests of all stakeholders.

The purposes provision does refer to providing fair compensation. However, given the absence of financial responsibility and accountability as expressed purposes of the act, it leaves it open to the WCB to widen the scope of recognized claims and increase benefits beyond the means of the system.

Section 15 provides that the WCB is to monitor developments in understanding the relationship between work, injury, occupational disease and workers' compensation so that generally accepted advances in health sciences and related disciplines are reflected in benefits, services, programs and policies consistent with the purposes of the act. But the only restraint this provision places on the WCB is that the WCB is to evaluate the consequences of its changing awards to ensure that the purposes of the act are achieved.

We are opposed to the enlargement of areas of entitlement. At a minimum, enlargement should only take place after explicit analysis and consideration of the costs and effects of these decisions on the system.

The indexation formula: The Friedland formula for indexation is in our view a noticeable improvement over the current indexation formula. However, we contend that the effectiveness of the proposed change is significantly diluted by limiting the scope of the formula's application. It is submitted that the exemptions should be deleted, thereby increasing the indexing provisions' effectiveness in ensuring the system's viability.

Increase in pensions: Section 32 of Bill 165 proposes that an additional \$200 per month be paid to certain claimants. In his address before this standing committee, the former Deputy Minister of Labour estimated that this payment would be made to approximately 40,000 persons currently.

We question the necessity of providing such supplements to pensions at this time. The additional costs are considerable. The BSC indicated in its written submission to this standing committee that the real effects will be to increase the unfunded liability by more than 10% or approximately \$1.5 billion immediately.

At a time when the financial integrity of the system is of concern, we question the prudence of these increased payouts without some safeguards. If additional pensions must be granted, we submit that the dollars should be directed towards those individuals with greatest need, and that at the least, the additional pensions be terminated or substantially reduced at age 60 or 65 when other benefit programs such as the Canada pension plan and old age security become available.

Duplicated benefits: CP Rail System supports the bar to WCB compensation where compensation is being received from another jurisdiction in respect of the same accident as provided for in section 3 and subsection 15(2) of Bill 165.

Obligations to re-employ: Section 10 of Bill 165 proposes to allow the WCB to determine on its own initiative whether the employer has fulfilled its obligation to re-employ. We submit that the merits of expending time and resources determining such matters where no complaint has been made are questionable. The present

system, which is triggered by worker complaint, is working well and should not be changed.

Vocational rehabilitation: Section 9 of Bill 165 provides that the WCB shall, where required, design and provide a vocational rehabilitation program for injured workers in consultation with the worker, the employer and, if possible, the worker's physician. Sections 27 and 31 of the bill purport to allow the WCB to order a penalty payment against an employer who fails to cooperate in vocational rehabilitation services or programs. The powers to assess such a penalty and to determine the amount are completely within the discretion of the board. There is no indication of any limits or guidelines, or of any grounds upon which the employer may object.

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CP Rail System is concerned that valid objections about the design and implementation of vocational rehabilitation may be determined by the WCB as being uncooperative and result in a penalty being assessed. The legislation should establish specific criteria against which all parties can measure their performance and establish programs of due diligence. Levels of penalty and grounds for appeal must also be established.

Section 8 of Bill 165 provides that medical information may be released from a physician to an employer only with the consent of the worker. The employer is required to cooperate fully with a view to the timely rehabilitation and re-employment of the injured worker, but there is no corresponding obligation on the worker to likewise fully cooperate in this particular regard. This provision allows a worker to impede the flow of medical information necessary for an employer to effectively participate in the development of the worker's rehabilitation program and re-employment process.

CP Rail System submits that sections 8, 9, 27 and 31 of Bill 165 are not consistent with fostering a cooperative spirit on the part of the employer and worker and are counterproductive to the motivation required by all stakeholders in promoting the purpose of the workers' compensation system.

On the question of mandatory mediation, section 21 of Bill 165 requires the WCB to provide mandatory mediation services with regard to certain issues relating—

The Acting Chair (Mr Noel Duignan): I must interrupt. You've got approximately about two minutes left to finish your presentation.

Mr Taylor: Fine. Thank you. The entire process could be made very time-consuming by mandatory mediation, and it requires the WCB to increase its services at a time when its resources are already stretched to the limit.

Independence and impartiality: We respectfully submit that the WCB will be effective and credible in the exercise of its duties only if it is truly independent of the Ontario government, that it has the requisite competence and staffing to deal with issues placed before it and if it deals with these issues in a consistent and impartial manner. We are concerned that several proposed amendments will have the effect of eroding the effectiveness

and credibility of the WCB's actions and decisions.

Section 16 provides that policy direction is to be dictated to the WCB for one year by the minister. Further, it requires that the WCB report to the minister whenever it acts or decides in a manner that related to policy direction. In addition, section 17 provides that the minister and the WCB are to enter into memoranda of understanding in regard to several integral areas affecting the operation. This could be used to extend permanently the ability of the minister to dictate policy to the WCB.

Requiring the WCB to report to the minister every time policy touches upon its actions or decisions makes no sense operationally. Not only is such a provision inefficient, but it also will have the effect of fundamentally impairing the WCB's ability to act and decide. It is essential that the WCB remain independent and impartial. The politicizing of WCB policy must be strongly discouraged, and in this regard, sections 16 and 17 should be deleted.

In conclusion, as we have noted, there are elements of Bill 165 that CP Rail System supports. However, a number of improvements are needed, and they are urgently needed, in order to ensure that Ontario has an effective and manageable compensation system that is both secure for injured workers and allows business to remain competitive and viable.

During these hearings you have heard from many representatives of the employer community who have recommended that Bill 165 be withdrawn. CP Rail System asks you to seriously consider this recommendation. Failing that, we urge you to implement changes to Bill 165 consistent with our comments today.

We thank you very much for your attention.

Ms Murdock: In the presentation in Ottawa we did get a chance to talk outside. I don't know whether CP has a modification or a return-to-work program so I don't know if you'd have time to even briefly state what it is.

Mr Charles Sheehan: As a matter of fact, we are working on a return-to-work program and at this very moment we are meeting with labour representatives in Montreal.

Mr Mahoney: I'd like to ask you how you'd feel about being moved from schedule 2 to schedule 1, which some people in this room might like to do to you. But I would rather ask you a question around the unfunded liability. Why, in your view, is it necessary, when the liabilities of some \$17.2 billion against the assets of some \$6.8 billion are required to be paid out over a 25-, 30-, 35-, 40-year period down the road, to have \$17.2 billion in the bank today to cover \$17.2 billion in long-term liability?

Mr Jean-Louis Masse: I guess our main message is to control the growth of the liability. Liabilities have to be paid in a consistent and regular manner. It may create other problems to have assets equal to the liability, as you're suggesting. That may not be necessary. But a substantial reduction in the liability and a measure of the financial implications of future changes to your actions or provisions are important so that you know where you're going.

Mr Ted Arnott (Wellington): I have a question about the experience rating system. Of course, this bill changes the experience rating system which, in the past, has been a results-oriented incentive for employers to improve their workplace safety records. How will the changes that the government is proposing, to make it a more bureaucratic, audit-based approach to experience rating, affect your company?

Mr Jim Madge: As far as CP Rail System is concerned, it doesn't directly affect it that much in the sense that as a schedule 2 employer we pay dollar for dollar, plus the administration fee. So it's not a question of affecting ability to either reduce the premium or be penalized with a heavier premium.

It ties in more, with respect to our company, with the customers and their ability to be able to cope with a program that, in effect, disregards experience and looks more at a specialized program of return-to-work or rehab, whatever.

The Vice-Chair: Thank you very much. On behalf of this committee, I'd like to thank CP Rail System for bringing us their presentation this morning.

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OFFICE OF THE WORKER ADVISER

The Vice-Chair: I call forward our next presenter, from the office of the worker adviser.

While they're coming forward, I'd just like to indicate to the committee members that the Ontario Chiropractic Association is here. Unfortunately, they will not be able to be scheduled in the public hearings, but their presentation will be handed out to all the committee members.

Good morning and welcome to the committee.

Mr Alec Farquhar: I'm Alec Farquhar, director of the Office of the Worker Adviser and I'm very pleased to be here with you today to present our views on Bill 165.

The package that is being given out contains a full brief, an executive summary, and what I'll be working from today are the notes for the presentation which really are hitting the highlights. I would urge you at your convenience to take a look at our brief. We've provided a lot of statistical background and detail that might be of use to you in your deliberations. I'll get right in to my comments.

The office of the worker adviser is in a good position to comment on Bill 165 because of our unique role as an agency advocating for injured workers. We deal with around 30,000 new requests for assistance each year. We have 15 offices in every major centre of Ontario. We represent a significant proportion of workers at all the appeal and review levels in the system, so we encounter the workers who are having problems with the system, and we try to help them resolve them as best possible.

Before getting into comments on the bill, I'd like to just take us 20 years back to when I got involved working with injured workers. That was 1973 in law school, and we encountered a system where we assumed that many of the workers we met would not be able to return to work after their injury. There'd be no job for them. There was virtually no legal protection for return to work for injured workers. We assumed they'd get little voc

rehab. The WCB's programs were rudimentary at best. Lots of people got no rehab. The board was very compensation- and benefit-focused. They thought of themselves as an agency whose prime role was to pay out benefits.

We assumed the extent of workers' injuries wouldn't be fully recognized because of the role of board doctors, and we assumed we'd be dealing with a centralized, Toronto-based hierarchical structure that wouldn't be able to respond to our needs. I know there are many employer organizations that share that same view on the latter point, that the board wasn't that responsive to their needs either.

All of this meant that we fought for injured workers' benefits. We focused on getting money for them to make up for what they'd lost and the fact they were unable to return to work, and in our brief you'll see, I think, some shocking statistics of the extent of the failure of the system and the failure of Ontario's employers to get workers back to work. Depending what statistics you use, anywhere from 30% to 40% of all the workers with a permanent disability award prior to 1990 are unemployed.

Depending on the statistics you use, up to 80% of a similar group, injured since 1990, and unfortunately we're comparing apples and oranges a bit because the systems are different, are unemployed following injury. It looks as if for injured workers in Ontario, having an injury for up to four out of 10 of them, and maybe even more in the new system, is a sentence of lifetime unemployment. That's a system that needs drastic change.

Much has changed in the 20 years I've been advocating for injured workers, and I try to sum up in the presentation here really the two key changes: First of all, a greater emphasis on prevention, rehabilitation and return to work; second, a greater emphasis on empowering the workplace communities in the system, opening up the system to them. We've had an equalization of the number of members for employers and workers on the board. I'll give you what I hope isn't a controversial opinion but perhaps finding the solution is going to be difficult.

I believe, and on behalf of the OWA I would say, that whatever views workers, employers and members of this committee might have on this specific bill, the challenge for all of us is the same and the challenge is that we must find ways for workers and employers to reach consensus on key issues. We must find as many win-win solutions as possible, focusing on prevention, rehab and return to work. At the highest levels and in every workplace—in other words, the leaders of business, the leaders of labour, the local leaders of business and labour, in every workplace in Ontario that the act applies to—we have to build partnerships that ensure dignity and work for injured workers and keep the system affordable for employers and the economy as a whole.

That's a tough job. Right now the two communities are very polarized, and I hope that your work will contribute to restoring a consensus approach. It's going to be tough but it's happened before, and I give you an example in the notes here. In 1991 and 1992, a bipartite task force of employers and workers with representation across the

province reached consensus on 12 key areas of change to the system. That was the Chairman's Task Force on Vocational Rehabilitation and Service Delivery. I worked at the board then, I supported the work of that task force and its work has resulted in an action plan. Consensus on key issues was reached. They were operational on service delivery issues but essentially it was shown to be possible, and I think this bill opens up further areas for cooperation, consensus and building that partnership.

I'll turn very briefly to the bill, because I do hope to leave a little bit of time to have questions, and I'll go through quite briefly touching the high points. What I've done in the notes is I've given you our proposed amendments. I won't go into them in detail here.

Purpose of the act: I support strongly the addition of a purpose clause to the act. It's vital to describe the fundamental, substantive objective of the legislation, and I believe the description in the bill is appropriate.

Governance: I believe bipartite governance will require that the workplace parties reach consensus, and the OWA's position is that we agree it's the most desirable way to govern the system. It'll help us build those partnerships at the provincial, local and workplace levels that must exist to ensure an effective workers' comp system. Imagine if, in five years, all of us can look back and say that something was done here that helped build that partnership. I think it would be a tremendous achievement and something everyone could be proud of.

Vocational rehab and re-employment, in my view, is the key, the nucleus, of the financially viable system. I've given you the statistics on the unemployment rate of injured workers; it's shocking. It's a failure by our society to reintegrate people into the dignity of work. The bill presents a framework for voc rehab and re-employment cooperation among employers, injured workers and the medical profession that could lead to real improvements, and what I've done here is I've proposed some changes that I believe are in the spirit of the legislation that would focus it more on some of the needs I've identified in terms of injured workers.

First, provision of medical reports: This would ideally support a meaningful exchange of information among the voc rehab partners, including the medical profession, which is essential to re-employment programs. I'm worried about the way it's currently drafted because I believe it could permit uses by employers which were not intended and wouldn't fit in with the re-employment objective.

What I've set out here in page 6 of the notes are some pretty simple amendments that say that the medical information will be provided when there is cooperation by the employer in a voc rehab or return-to-work program. We don't want to be giving out information for negative purposes, but for positive purposes. On page 7, we have some language regarding clarifying the consent requirement by the injured worker.

At the bottom of page 7, we speak a little bit about the need for a no-reprisals clause in the act. That is where a worker, for good reason, doesn't consent to disclosure. We want the worker protected from adverse consequences, and this kind of language is in many pieces of

labour relations legislation, notably, I believe, the Occupational Health and Safety Act. We give a sample draft of that on page 7.

Voc rehab services for employers: The intent of this amendment, in our view, is to help employers understand the benefits of bringing workers back to work, to support employers in learning how to accommodate disabilities in work area and in job design and to help employers become more active and cooperative in voc rehab. These are aims that must be supported, in my view.

We'd like, as we did with the medical provision, to clarify that the employer's involvement in voc rehab should be focused on situations where they're cooperating in return-to-work and rehab efforts, not simply allowed where perhaps they're concerned about cost consequences but have no intention of helping that worker get back to work at their workplace or anywhere else.

Again, the language on page 8 and 9 is an attempt to clarify and focus the intent on the cooperative situations, and there are a couple of ways of going about it. One way we set out, and another way I'm perfectly satisfied with as well, on page 9, is the OFL's amendment. They are different ways of doing the same thing.

On page 9 we speak briefly about re-employment, and there what the bill does is it gives the board the opportunity to be proactive in re-employment. The Office of the Worker Adviser represents by far more injured workers in the re-employment process than any other single agency in the province. What we've noticed time and again in the hundreds of cases we do every year is that often the board is reactive; it waits for an application, it waits for time to pass. A notice of fitness is sometimes issued after the worker has returned to work, or perhaps after problems have developed. The amendment would allow a proactive approach.

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What we do on page 10, from our experience in case work, is set out another list of areas where we believe action could be taken to improve the re-employment process. I won't give you the details, but essentially it's about various ways to better integrate workers back into the workplace.

On page 11 we look at the mediation provisions. We welcome these provisions because they provide an opportunity for swift and fair resolution of disputes. A very common situation unfortunately now, especially in re-employment, is while it's supposed to be a fast-track process, it often takes many months.

We do make comments on page 11, though, about the need to ensure standards for these mediators, the need to ensure that if the worker needs a representative that would be available and the time limits could be extended to accommodate that, the need to ensure we have a final hearing at the board before it goes to WCAT. I'm really worried that if we don't have that final hearing, WCAT will be swamped with re-employment matters. So our language on page 12 is aimed at fixing those aspects of the provision, but the idea of mediation, the approach that tries to reach consensus on a case-by-case basis, we welcome that.

Experience rating, page 12: The language in the bill and the amendment that's been proposed will, I believe, balance employer concerns about the preservation of a cost and frequency basis for experience rating and the need to add new factors. On page 13 I mention that this amendment will essentially add some way of auditing or reviewing employer rehab and re-employment practices, and of course prevention practices, to the list of factors which will influence assessments. This way, we think we will encourage employers not to be afraid that a general program they might introduce, which might initially lead to more claims being recognized or reported, will prejudice their assessment rate. We believe if we can add in the audited health and safety and re-employment practices, we will create a holistic experience rating program that will really meet the needs of workers and employers.

I know there's a lot of concern in the employer community about the auditing and how that would be done. I strongly believe that if we jointly involve workers in the workplace, through their unions especially, and employers in that auditing process, you're not going to see bureaucracy; you're going to see a problem-solving approach that will really work for workers and employers and is already working in workplaces.

On page 13 we highlight the shocking statistic that there was an off-balance in experience rating of \$187 million in 1993; \$187 million more awarded in rebates than charged by surcharge. That figure, just for example, would more than pay for the \$200 a month that's being proposed as additional benefits to injured workers. It's at that kind of level.

We strongly advocate making experience rating revenue-neutral, so that the bad actors are paying for the rebates that are given to the good actors, instead of the immense off-balance we saw last year. I will add that historically that's by far the highest. It was a bit less in previous years but it's been a growing problem, and I understand we're headed for a pretty large off-balance this year as well.

On page 14 we look at the \$200 a month. It's a change we welcome. I know these are tough times. It's a real, although modest, step to deal with all these unemployed workers who've been outside the workplace for many, many years on small pensions. We welcome that as well as the government's announced intention to avoid a clawback by family benefits and general welfare.

When I think of the \$200 a month, I know it's a cost item to employers, but I think of people I know, workers I know, what it'll mean to them and their families, people who've in some cases been unemployed and on disability pensions since the 1950s, the 1960s and 1970s. Their families have suffered from this and they deserve some recompense. We argue strongly for the addition of one more group, those workers who are currently over age 70 who were unemployed and in receipt of the older worker supplement before they turned 65. But we welcome the provision.

Indexing's a tough issue. That's the last one I'll speak to. Ideally, in a perfect world, the Office of the Worker Adviser would rather solve the problem without the Friedland formula, and we advocate here on page 15 a

cost-reduction strategy based on aggressive prevention and re-employment practices.

We'd also like to see tougher revenue measures by the board to force the 20,000 employers that are estimated, although covered, not to be registered—give them a bit of an amnesty or something, but then make them register and pay their premiums. We advocate getting rid of the off-balance. That would save the system a lot of money, and in the longer term covering all employers at a fair rate to account for the fact that our economy's changing. That's something that's not before you.

If we can't do anything about Friedland, in terms of withdrawing it or otherwise proceeding without it, I've got some proposed changes on page 16. The top of the list is a withdrawal of the 4% cap. I believe there would be little cost consequence to this. My understanding is that the cost projections didn't really take the impact of the cap into account during times of high inflation.

Another change we'd like to see is to look at extending the exemption to some new groups, groups similar in characteristics to the ones that were exempted in the original drafting of Bill 165, and I list some examples on page 17, workers injured since 1990 who are currently age 55 or older, workers who return to work at a significant wage loss with a large FEL award etc.

And then the royal commission, we support and hope that it's a real opportunity for employers and workers to learn more about the system and about possible solutions. I'm serious about consensus. Consensus could mean give and take, but we've got to strive for it. I've left a little time for questions and would welcome any of them that you have now.

Mr Mahoney: The issue of the off-balance, you've got to help me with this. It seems to me on the surface that if you have an incentive plan that is to give incentives to companies to be good actors—I think your term was good actors, bad actors; and we have more good actors than bad actors—we're going to see accident rates go down, both in number and severity. If they go down, rebates are going to increase. Your suggestion is that we need an equal amount of rebate to surcharge, which the simple implication would be an equal number of bad actors and good actors. That simply makes no sense to me at all.

It would seem to me, on the surface, that if the rebates have gone up, there's a problem identified that workers are being intimidated not to file claims, and I accept that this happens, and that's got to be stopped, but by and large, if the off-balance is as high as it is in favour of rebates, and the accidents we know are down, which some will argue is the economy etc, there's a balance here that just—why would you equalize those things?

Mr Farquhar: Okay. I think it's a very good question, and I don't think I could do justice to it in a 30-second answer, but what I'll say is this. Under the current system, it was established to be revenue-neutral, and it's somehow gone off balance, and I believe for revenue purposes, we've got to resolve the off-balance.

I agree in the longer term, if we can really show that the good actors do outnumber the bad actors, and I'm not

sure the current statistic really shows that, we could look at a longer-term situation where rates go down. I would personally prefer a system where we balance the rebates and surcharges and then the whole system benefits from the payoff of gradually reducing rates. I think designing that is going to be a challenge. Rather than assuming that the current system is really measuring what we want to measure, and letting it stay off balance, I think we've got to distinguish between the current system, making it balanced, and the future system which could well generate long-term savings, and you could justify looking at an off-balance as long as it's documented, but under the current system, I think we've got to balance it. It's a haemorrhaging in the system that's—\$187 million is getting close to 10% of the board's revenues for 1993.

Mrs Witmer: Thank you very much for your presentation. It appears that you're pretty well supportive of Bill 165 and you've made a few small recommended amendments to the bill.

I'm sorry that you didn't also take the time to demonstrate where savings could be achieved within the system. I know there's a lot of frustration with the Office of the Worker Adviser. We know that from our staff in our constituency offices, and I think that type of information might have been very helpful.

Mr Farquhar: In the brief there's more of that, but a statistic that's quite valuable in the board's report on the unfunded liability, for every 5% improvement in return-to-work rates, we save 15 cents on the \$3 rate. That's the assumption of the aggressive return-to-work strategy. The off-balance removal would save from \$100 million to \$190 million a year. The revenue collection measures that I mentioned, it's a bit harder to estimate, and I don't have those statistics available to me, but 20,000 employers, even at an average payroll of \$100,000 each, you're looking at a dramatic revenue increase for the board. So I have suggested some that I think are quite costable.

Mr Derek Fletcher (Guelph): Thank you for your presentation. It's a pleasure to be here. I'm just wondering about the rebates and what Mr Mahoney was touching on. We know there are some companies that would rather a person not file a claim on the WCB. In fact, I know some companies where if a person is hurt outside the workplace and goes on weekly indemnity, that's fine, but if a person is injured at the workplace, sometimes it's: "We have light duties right off the bat. We don't have to file a claim." That tends to keep some of the reporting down, and some of the accidents down. The rebate is also based on that with the findings that they have.

Do you honestly believe that under the present situation where this does happen—I'm not saying it happens everywhere but it does happen—that perhaps the rebate situation is not the way we should be going? Perhaps we should be looking at a different form of incentive when it comes to accident free rather than a rebate so that the money can get back into the system and it's not being a drain.

Mr Farquhar: I guess there are two questions, one is distinguishing, as I tried to do, between the current and

future systems. Currently, I don't believe we have strong enough evidence that could justify allowing the off-balance to continue. In a future system, you might conceivably be able to look at an off-balance situation.

I think financial incentives of some kind are really important, and whether they are done by rebate or simply perhaps by forgiving part of next year's assessment or by some other flow that the employer can measure as being of benefit, I believe that to abandon some form of varying the assessment rate, depending on your success in health, safety and rehab, would probably be a mistake. It's the form, the way we do it, that's really at issue here.

What I welcomed in the bill was making it a more holistic assessment. We encounter, as the Office of the Worker Adviser, a lot of employers who really want to cooperate with the system and bring their workers back to work, who want good health and safety programs. They're competing with bad actors who hide claims and engage in all kinds of avoidance behaviour. They come to us saying: "How can we compete? We've got to start acting like these other people." I'd like a system that encourages proactive prevention and return-to-work programs and really measures the costs, rather than one where it can be manipulated by hiring a consultant or whatever.

The Vice-Chair: On behalf of this committee, I'd like to thank the Office of the Worker Adviser for bringing its presentation to this committee this morning.

The committee recessed from 1214 to 1404.

The Vice-Chair: It's my understanding that we have consensus among all three caucuses that the amendments, wherever possible, will be submitted to the clerk by Thursday, September 22 by 5 pm, and again this doesn't preclude new amendments coming while we're in clause-by-clause. But for the convenience of the committee members, they'll try to have them out to each of the members' offices by noon on the Friday so we'll have a chance to look at them before we get into clause-by-clause.

ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE

The Vice-Chair: Our first presenters for this afternoon are the Ontario Sheet Metal Workers' and Roofers' Conference. Good afternoon and welcome to the committee.

Mr Jerry Raso: My name is Jerry Raso, and to my right is Mr Scott MacDougall. We are here today on behalf of the Ontario Sheet Metal Workers' and Roofers' Conference. The conference represents presently over 10,000 unionized construction workers in the province of Ontario, both sheet metal workers and roofers. Up to a few years ago, we had over 15,000 members, but with the recession in the economy we're now down to 10,000.

The conference is very pleased today to be able to have this opportunity to comment on Bill 165. Coming from the construction industry, our union is very, very active and concerned with workers' compensation issues, and it goes without saying that the construction industry has a very high, disproportionate share of injuries in Ontario. It's a very dangerous industry, we have a lot of

our members forced on to workers' compensation, and because of that we're very active in Bill 165 and all workers' compensation issues.

At the start, we'd like to say there are elements of Bill 165 that we support. We are very, very pleased to see this government initiate reform in the area of workers' compensation. There are a lot of issues in workers' comp that have to be dealt with. Again it goes without saying that the workers' compensation system is presently not serving our members. We have a very high rate of accidents; we have many members who are not being compensated for accidents they should be compensated for; we have members who are undercompensated; and we have a lot of members who are not getting back to work and who are not receiving the vocational rehabilitation that they need and that they deserve.

Elements in Bill 165 that we do support: First of all is the proposed \$200 increase for older workers who were injured before 1989 and who are still unemployed. For those people, that is an emergency issue. It is not a matter of charity, but it is a matter of justice. These people have been denied justice for too long. A lot of them are living in poverty, living on welfare, and this has to stop. The \$200 is not going to solve the problem. I mean, we all know that \$50 a week does not go very far, but at least it's a beginning.

We support the introduction of the purpose clause, which clarifies that the purpose of the bill is to help workers who are injured or who suffer occupational disease.

We fully support the creation of a bipartite board of directors, and we fully support the creation of the royal commission, which will study not only full and all-encompassing reform of the workers' compensation system but will also look into a universal disability system, which our union supports.

Unfortunately—and we say this with much regret, because our union was here making submissions fully supporting Bill 40, and we've made submissions fully supporting Bill 80—we see a lot of problems with Bill 165, and when we speak today we're speaking mainly from a construction-industry perspective.

The first thing we have to say is that this bill came out of the PLMAC discussions, or negotiations, and unfortunately construction was not invited to that table. We weren't there, and our issues and our concerns were not addressed. The WCB already recognizes that construction is unique because of the nature of construction. We have an ISU that's devoted strictly to construction; we have sections of the re-employment provisions of the bill which deal strictly with construction. But when it came time for Bill 165, we were forgotten, and because of that, Bill 165, in many respects, does not help us.

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The thrust of the bill is supposed to be a compromise or a tradeoff. In exchange for greater re-employment rights with the accident employer, injured workers were supposed to give up full benefits, were supposed to accept cuts in the form of de-indexing. Because we weren't there, what has happened is that we won't get re-

employment rights through Bill 165 but we will get the de-indexing. For us, that's a no-win situation.

There are many examples where the bill, in excluding construction, hurts us. The most glaring one and the most offensive one is the issue of re-employment, which is supposed to be the key element that's supposed to benefit injured workers. I have a quote that says, "The new agreement will reduce the practice of deeming by strengthening the employer's obligation to re-employ injured workers."

The major problem we have in construction in getting back to work is the fact that section 54 of the present bill excludes probably 75% of our members from having any re-employment rights whatsoever. Section 54 provides re-employment rights for injured workers only if you've been with one employer for a full year and that employer employs over 20 workers. Those two provisions eliminate at least 75% of our members. Construction is characterized by short-term, temporary employment with many, many employers. We're not tied to employers; our members are tied to the union hall. They go out and they work for a company for a month or two, they get laid off, they go back to the hall and hopefully they get sent out to another employer.

The employers our people do work for, the majority of them are small companies. We have hundreds and hundreds and hundreds of companies that employ five, six and seven people. Because of this, the majority of our people do not have any right to re-employment whatsoever. Bill 165 did not address this, and because of that, that situation doesn't change. It's still a massive problem.

The second problem is, because of the nature of construction, if you do have re-employment rights, for those few who do, and you're permanently injured, accommodation in the construction industry is quite difficult. Again, because you've got temporary work sites that don't last very long, it's hard to accommodate. We don't have factories that are permanent, where people go and expect to stay there for years at a time, so you can spend some money to make some adjustments. For our members, they go on to a site, they do their work and they get off, and because of that, it's very difficult to accommodate.

The third problem with construction is that if you do manage to have employment rights, you do manage to get back to a site, that site will only last probably for a few weeks or a few months and you get laid off. The present act deems that the employer has fulfilled its re-employment obligations, and that's all you get. You've gone back three, four weeks, you've been laid off, and the board says, "Sorry, you've got all the rights you're entitled to."

Because of these three things, our people are not getting re-employed. Bill 165 does absolutely nothing to address that. It doesn't do a thing.

There are some other aspects of re-employment that we have problems with in Bill 165. The one basic principle of the bill for re-employment is to get the responsibility away from the board and on to the workplace parties: the accident employer and the employee. We have problems with that. On one hand, you could see that as the board

and the government trying to empower the workplace parties to take responsibility. Another way of looking at it is that it's an abdication of responsibility.

For people who belong to unions, that shouldn't be a problem. You've got a union, which at least in some aspects of the workplace will equalize the power. If you don't have a union, or even if you do have a union and you're terrified of challenging your employer, there's no equal relationship, there's no balance of power, and what you have is one party dominating the other, and that's what we're afraid of.

Documentation from the board talks about it becoming an enabler and an adviser. Well, we think the board's responsibility is more than simply advising other parties. The board is supposed to be an advocate for injured workers and is supposed to work to get people back to work. We're not so sure that this new principle is going to work in each and every case.

Other problems that we strongly object to and we feel are an invasion of our members' rights is the obligation to provide the employer with medical reports from physicians with the worker's consent. We strongly object to that. We feel there's no justification whatsoever for an employer to be in direct contact with the physician. That violates doctor-patient confidentiality. I think it creates a more confrontational approach. If things are working well and if the employer is sincere about getting the worker back to work, he or she or it does not need to speak to the doctor directly. They can get it through the compensation board or they can get it through the worker.

We are concerned that this will be used as a means of coercion against workers. Even when they are afraid or object to consenting, especially if they don't have a union, they're going to agree to it, very reluctantly. Another reason they are going to agree to it is because they're going to be afraid that if they refuse they're going to be deemed uncooperative by the WCB and they're going to end up getting cuts in benefits. We're afraid the information is going to be used for improper purposes. Again, we feel there is no need for employers to have direct contact, and that section should be deleted.

Two other problems in terms of re-employment: One thing the act does to encourage employers to cooperate in re-employing is to levy a fine or a penalty. We don't think that's good enough, and we don't think it's necessary. First of all, that power already exists in the act in subsection 54(13). If they don't accommodate, they don't re-employ, a penalty can already be levied.

Secondly, a fine doesn't go far enough. That's not the answer. We made submissions in Bill 162 that the board has to have the power to order reinstatement. Bill 165 fails in that it also does not give the board the power to order reinstatement. The board needs that power and it should have it.

Another area of Bill 165 is vocational rehabilitation. Again, construction has special needs in that area. Because of the nature of construction, a lot of our members who are permanently injured will never be able to go back to work on a construction site. They need vocational rehabilitation. We are presently experiencing a lot of problems getting our workers decent vocational

rehabilitation. Whether it's through a lack of sincerity or understaffing, whatever, our members are not getting good voc rehab service. Many times they're being denied vocational rehabilitation services because of their age or their educational level or because of the fact that they come from a high-wage-earning industry.

The board's goal of voc rehab is to get people back to a job that can approximate their pre-injury earnings. Well, for a lot of construction workers who were making a decent wage, they can't get back to a high-level job, so the board denies them voc rehab, totally ignores the question of self-respect and dignity and the fact that workers are willing to be retrained to jobs that may earn less but they do want to get back to work.

Bill 165 doesn't address the issue of voc rehab for our members. Again, the problem is that our people are being denied voc rehab or they're being pushed into jobs and goals that they don't agree with. Bill 165 doesn't address that because it still gives the board too much discretion.

The language is that voc rehab services will be provided "if the board considers it appropriate to do so." If the board determines that a worker requires a voc rehab program, there shall be one designed. A voc rehab program "may include assistance in seeking employment."

Again there's too much discretion, and there's nothing in there that addresses the quality of the voc rehab. In fact, subsection 53(12) weakens it. The present act says the WCB "shall include" assistance for up to six months, and now it's being changed to "may include."

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For our members, they're not going to get greater re-employment rights, they're not going to get better vocational rehabilitation, and in exchange what they're going to get is a cut in their benefits. They're going to see their benefits now cut through de-indexing, through the Friedland formula. We think that's wrong and we think it's unjust. What it's doing is blaming the victim. We're going to pass the cost of injuries back on to injured workers. That's wrong, and it will be devastating. The business caucus of the PLMAC wrote that over a 20-year period, de-indexing will reduce total benefits by \$27.6 billion. That's a lot of money out of the hands of workers and it's going to force them even further on to welfare and into poverty.

I look at the business proposals to the PLMAC, and one justification they give for reducing benefits is they say, "It's a fundamental principle of insurance and pension design that people who are not working do not need as much income as those who are working." Well, that's news to me, that I can simply phone my bank and say, "I'm unemployed, so will you reduce my mortgage payments?" I didn't know I could phone Ontario Hydro or Consumers' Gas and say, "I've lost my job, so will you cut my hydro bill?" "Will you cut my gas bill?" This is ridiculous and it's very offensive and it's simply not true. Everyone needs money, and there's no justification for cutting benefits. It's taking money out of the pockets of injured workers and it's putting it into the pockets of their employers.

As to the \$200 increase, we wholeheartedly support it. It's long overdue. We think it's not enough, but it's a good start. We have two concerns about the \$200 increase. It excludes a few people, those who were over 65 in July 1989. We feel that isn't right; they too are entitled to it and they shouldn't be denied it. The other problem is the discretionary aspect of it, it being tied to the supplement. It's supposed to be permanent. We're concerned that you're going to get it today but tomorrow, if you get your supplement cut off, you're going to lose the \$200. It should not be tied to the supplement.

One other point: employers being involved in voc rehab. We strongly, strongly object to that. If the accident employer is not providing re-employment, that accident employer has no right whatsoever to be involved in a voc rehab program. If they're going to provide re-employment, they're going to be involved. If that injured worker is not going back, the accident employer has got no business being there, none. If he or she is concerned, they can voluntarily assist the employee in trying to find other work, and they have a right to be informed through the WCB. But there's no reason they should be involved in a voc rehab program to get injured workers back into another occupation or another field. It just doesn't make sense.

Mrs Witmer: I think what we're seeing now at the end of our three weeks is that there's tremendous polarization on this bill, and I don't think it's possible at present to come up with a bill that is going to respond to the needs of injured workers, employers and employees. That's the only comment I have; I don't have a question. I think we have a very serious problem in this province.

Ms Murdock: This morning we had the home builders' association in, and they made a suggestion about having a credit system for employers taking back workers from other employers. We all recognize that construction is a very unique business, but they would set up a credit system for employers if other employers—say there was a project going on that you could get someone back on early return to work. I'd like your comments on that.

Mr Raso: If other construction employers take injured workers back, giving them a credit?

Ms Murdock: You've explained very eloquently the short-term relationship sometimes between employer and employee in the construction industry, and that by the time they are able to return to return to work the project's over or whatever. If there were a credit system set up whereby an employer would get a credit if he took a worker from another construction firm—I don't know how it would work. It would have to be discussed.

Mr Raso: I'd have to think about that. It seems to me, with most of our employers, they have to consider dealing with their own workers. Most companies have their own workers who get injured. I don't have any problems with that if what you're talking about is them designing return-to-work programs.

Mr Steven Offer (Mississauga North): Your presentation starts off by being complimentary about the legislation, but then the bulk of your presentation goes against it, with some very serious concerns you have with

the legislation. I take it from your submission, as we are in the final day of public hearings, that if the legislation is not amended in accordance with some of the concerns you've outlined, you would be opposed to the legislation passing as it now stands.

Mr Raso: We're opposed to some elements of the bill passing. We feel that a lot of the bill should go through. The \$200 should go through; the bipartite should go through; the royal commission should go through.

Mr Offer: That's separate. My point is that you've made a very persuasive argument about some of the glaring deficiencies in the legislation, and from my perspective what I would like to know is, in the event that the government fails to address the concerns you have brought forward today, even though the bill contains some areas that you personally are in favour of, is it the position of the Ontario Sheet Metal Workers' and Roofers' Conference that it would be opposed to the legislation, for the reasons you have outlined in your submission today?

Mr Raso: I don't see why it has to be all or nothing. There are positive aspects and they should go through. You can delete provisions of the bill. Our biggest objection is the de-indexing. That's a major one. Why can't we put through the \$200 and the other positive aspects and deal with our concerns in construction in the royal commission or dealing with the board, trying to convince the board to create a bipartite structure for construction?

The Vice-Chair: On behalf of the committee, I'd like to thank the Ontario Sheet Metal Workers' and Roofers' Conference for bringing its presentation to our committee.
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LAW UNION OF ONTARIO

The Vice-Chair: I call forward our next presenters from the workers' compensation committee of the Law Union of Ontario. Good afternoon and welcome to the committee.

Mr Wes Wilson: My name is Wes Wilson. This is Peter Bird; this is David Wilken. We're from the Law Union of Ontario. It's a group of about 300 lawyers, law students and legal workers. A sizeable proportion of our membership has acted for injured workers for quite some number of years, both in the clinics and in the public sector and in the private bar as well. Most of our comments will be directed towards the Friedland formula, the partial de-indexation. Mr Bird's going to start.

Mr Peter Bird: I can perhaps start by answering the last question that was asked. We can state quite clearly that if de-indexation remains in this bill, the law union absolutely opposes the legislation as a whole. The de-indexation clause is such a massive cutback to injured workers that any of the other benefits contained in the bill are greatly outweighed by this cutback.

We're going to concentrate on de-indexation. We want to do more than simply say we oppose it, because I think anyone who's speaking on behalf of injured workers would say they oppose de-indexation. We want to show you what it actually does, what it will do to injured workers' benefits over the years.

In starting the discussion, it's important to know what

indexation is. Indexation is not an increase in benefits; indexation merely makes sure that benefit levels don't decrease over the years. Professor Paul Weiler, who did a study into workers' compensation back in the late 1970s and had a report in 1980, stated that the right to fair compensation implies a right to full indexation, that if you don't have full indexation, you are decreasing benefits. So it's important to state that indexation is an adjustment in benefits, not an increase in benefits.

It's very ironic that this government has introduced a piece of legislation, a bill, to de-index workers' compensation benefits, when the New Democratic Party played an important role, finally, after years and years of efforts by injured workers, in having benefits fully indexed in 1985. Prior to that, with the high inflation in the 1970s, injured workers' benefits were seriously eroded over time and that created the political pressure that eventually resulted in benefits being fully indexed. I note that it was an all-party agreement in 1985 that saw this full indexation come into place. It's strange that we're now dealing with a government wanting to take that away, when that party played an important role in seeing indexation brought into place.

The Friedland formula, the formula that's being proposed, or a modification of that formula, doesn't have anything to do with workers' compensation benefits. The report created by the task force chaired by Professor Friedland was looking into the problem of private pension plans not being indexed. Most of them had no indexation whatsoever. Consequently, after retirement, people's pensions would decline over the years until they were worth practically nothing. This de-indexation formula Professor Friedland proposed is in response to a situation where there's no indexation and it's an attempt to start the process to fully indexing private pensions.

We have a situation now where workers' compensation is, as it should be, fully indexed so that benefits don't decrease over time. To try to impose a formula meant for a private pension plan to try to assist pensioners—to impose that formula into a workers' compensation system and penalize injured workers is absurd.

There are two striking differences between private pensions and workers' compensation benefits. The most important is that private pensions will generally be paid for a relatively short period of time after someone retires; therefore the effects of de-indexation are not as severe. If you de-index pension payments over 10 years, the effect is far, far less severe than de-indexing workers' compensation benefits for in some cases 40 or 50 years. The fact that there's a limit on the amount of time that private pensions are paid was a factor in the creation of that formula and that formula allowing for less than full indexation.

The other important issue to note is that workers' compensation benefits are compensation for a loss of earning capacity and the resulting loss of earnings over a worker's lifetime. Pensions are not that. Pensions are, in most cases, a benefit negotiated with an employer. They're something on top of earnings, something on top the money a worker needs to support themselves over their lifetime. They are two entirely different things, and

to put one formula into a system out of context just makes no sense.

To look more carefully at the formula, there are two particular factors where the formula has been changed, and it's been changed in such a way as to penalize injured workers. One is the cap. The cap in the original Friedland formula amounts to a 6.5% cap on the increase in any one year. The cap stated is 10% on the CPI adjustment, but when you do the multiplication of 10% by three quarters and subtract one, you get 6.5%. So the cap has been reduced in a dramatic way.

The second thing that's happened is that there's no rollover of any excess on top of the cap from one year to the next. To quote from Friedland:

"Because of the rollover, the cap has a small effect on the benefits to retirees. Indeed any deficiency in indexing caused by the 10% cap would have been made up, over the past 50 years, in the very first year that the CPI fell below 10%."

The rollover effect of allowing any excess on top of a cap in indexation being carried over to a following year means the cap had virtually no impact. That rollover is not in this bill either, so the formula being used isn't appropriate in the first place, and then two very important modifications are being made to it to even more penalize injured workers.

To look at, in dollar terms, what can actually happen with de-indexation of benefits, we'll look at a number of the different awards that de-indexation will impact.

First I'll talk about FEL awards, future economic loss awards. FEL awards are the current system that's in place for workers with a permanent impairment. Six per cent of workers injured in 1992 received FEL awards in 1993. Of that 6%, only 6% of them received a 100% award and therefore were exempt under the de-indexation clause; therefore 94% of FEL recipients will be affected by this de-indexation.

To look at the impact on FEL, there's really a double impact, and I don't think anyone in their right mind would have intended this double impact to be there, because you're not simply de-indexing the FEL.

The way a FEL is calculated is that you take 90% of the difference between net average earnings before the accident and the net average earnings that a worker is deemed to be able to earn after the accident. The current system, as things stand now with full indexation, is that you compare a fully indexed pre-accident net average earnings. However, if you start de-indexing benefits, the pre-accident earnings will not be fully indexed and you'll be comparing apples to oranges. You'll be comparing wages that a worker is deemed to earn some year down the road, after inflation has had its impact, to pre-accident earnings not fully indexed so inflation has not had an impact.

The example we've given on page 4 of our submission looks at a worker with net average earnings of \$21,000 prior to an accident. This worker is then, after the accident, deemed to be able to earn \$11,000 per year. I might add that that would result in a very generous FEL, but given practical experience in dealing with the board,

very few workers receive a FEL of that size. The FEL would be \$9,000 per year, 90% of the difference in those two wages.

Assuming that you have inflation of 2% a year, in five years you would get a FEL award of \$9,936.73. If you apply the de-indexing formula to this, and this is in an inflationary climate of only 2%, which is presumably about as low as anyone is going to assume, you get a FEL award of \$8,446.85. That's a benefit cut of 15% in just five years. That's in circumstances where inflation is extremely low and in circumstances where the FEL payment is much higher than usual.

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If you turn the page and look at a situation where the FEL payment is 25%, ie, the worker is assumed to be able to earn 75% of his pre-injury earnings, then the cut after five years is 30%. The reason for this massive cutback is because you are comparing fully inflationed deemed earnings to non-indexed pre-accident earnings. You're comparing two things that should not be compared.

So what you're saying, if you're going to have less than full indexation, is that all FEL recipients, other than the very, very small minority who receive 100% FEL, are going to have their benefits totally destroyed over a very short period of time. It's not going to take long before their FEL benefits are going to be worth a pittance.

Non-economic loss awards, the effect of de-indexation on that, that will affect the maximum amount that can be paid, ie, 100% NEL. We first note that if you look at what this award is meant to represent, a compensation for pain and suffering, for the personal injury you've suffered, the 1993 maximum is under \$74,000. In the court system, if you suffer a personal injury, the maximum amount you can receive is \$250,000 approximately. That's just for the injury itself. That's nothing to do with loss of earnings, nothing to do with the cost of caring for a disabled person, anything like that. So you see we're already in a situation where you compensate a very small percentage of this loss. If you de-index the award, and here's the example we've given, 10 years of 4% inflation, effectively your de-indexing results in about a 20% cut in benefits.

These are very large cutbacks. You look at the formula, "Well three quarters of CPI, that's not bad; subtract 1%, that's not bad." If you do the arithmetic you see it's a very massive cutback, and you should know it must be a massive cutback to result in the billions upon billions of dollars taken away from injured workers over the years that this system will be in place.

Permanent disability pensions, ie, pensions for people under the old system. Prior to 1985 you received 75% of your gross pre-accident earnings; since then it's been 90% of net. These are about the same figures, more or less. If you look at appendix 1, which is I think the third-last page in our submissions, this looks at someone who receives a pension in 1985. To the current date it's been fully indexed, so you can see that the graph is flat. They're receiving the same amount of money every year, in real dollar terms.

However, if you start to de-index, pursuant to the current formula in this bill, and take reasonable assumptions about inflation—the assumptions we've taken are the inflation that's happened in the last 30 years. On this graph, the inflation shown from 1994 to 2024 is the actual inflation that happened from 1961 to 1991. Here's the effect on the benefit level these workers are receiving. To start, they're getting 90% of net. That's what the legislation states they should receive. Over the years it declines and declines. By the time these workers are perhaps age 65, they're actually receiving only about 38% of net average earnings. If you average that out over the life of the claim, you're saying they receive 68% of net average earnings. That's the effect of this de-indexation. It's a massive, massive cutback for the permanently disabled worker.

I've been told that some of the committee members asked previous presenters, "Well, which is worse, this de-indexation or cutting benefits back from 90% of net?" This example shows just how draconian this de-indexation clause is, and it hits the most vulnerable workers: the ones with the longest-term, most severe disabilities.

I'll now ask Mr Wilson to continue.

The Acting Chair: Before you do, I remind you that you have two minutes left for your presentation.

Mr Wilson: I've made constitutional arguments in shorter periods of time.

It's our position that the Friedland formula is unconstitutional, that it denies long-term disabled injured workers the benefit of equal protection of the law based on disability. If we posit two groups, the short-term disabled and the long-term disabled—in other words a person with a broken arm as opposed to a person with a severed arm—it's quite clear that although the Friedland formula appears, on the face of it, equally to all injured workers, the long-term effect is such that the erosion of benefits has a grossly disproportionate impact on those who are permanently disabled.

In the time I've got left, I want to take the committee through an example beginning on page 15 of our brief.

We take two injured workers and suggest that they're both earning the average industrial wage in 1985, and let's assume the Friedland formula is imposed on them at that time. In all respects these two workers are similarly situated. They're both injured and they're both awarded temporary benefits at a 50% rate. For the month of April 1985, they make the same amount of money. One injured worker goes back to work. The other one's disability is permanent. She makes 50% and is given a 50% disability award on a permanent basis. Now let's assume that the person who went back to work and is continuing to earn at his full earning capacity is re-injured every April 1 in successive years.

If we look at the long-term effect of the Friedland formula set out in appendix 2 of our brief, this graph demonstrates that for the same period of time in each successive year, the person who's gone back to work and who is off at a 50% level each time and whose earnings are based on the average industrial wage at the time of

each temporary disability is far better off at the end of that 10-year period than the person with precisely the same impairment of earning capacity over a long-term basis. In fact, after 10 years, in April 1994, the person who is on the long-term disability benefits is making, turning to appendix 3, some \$140 a month less than a person with precisely the same impairment of earning capacity who is there on a temporary, short-term basis as a disabled worker.

It's our submission that the imposition of the Friedland formula has a disproportionate impact on the injured workers who are disabled on a long-term basis. I won't take the committee through it. I've set out a quote on page 14 of our submission from the Supreme Court of Canada that directs the court—and this is in the context of common law tort awards—to pay strict attention to the long-term effects of inflation in order that a person may be fairly compensated over the long run.

It's our position that Friedland, because of the disproportionate effect on long-term injured workers, is unconstitutional, it victimizes the most vulnerable members of our society and that is not a legacy any government should be proud of.

The Vice-Chair: Thank you very much. You've gone a little over now. On behalf of this committee, I'd like to thank the Law Union of the Ontario Workers' Compensation Board for giving its presentation to the committee this afternoon.

1450

INCOME MAINTENANCE FOR THE HANDICAPPED CO-ORDINATING GROUP

The Vice-Chair: I'd like to call forward our next presenters from the Income Maintenance for the Handicapped Co-ordinating Group. Good afternoon and welcome to the committee.

Mr Scott Seiler: My name is Scott Seiler. I'm the coordinator of the Income Maintenance for the Handicapped Co-ordinating Group.

Mr Harry Beatty: My name is Harry Beatty and I'm legal counsel to the group.

Mr Seiler: The income maintenance group has been in existence since 1978 and has dealt with income-related issues and people with disabilities since that time. We would like to talk now about some of the issues around what we think are some of the things needed for the WCB.

Mr Beatty: I'm going to talk for a couple of minutes and then turn it back over to Scott.

The first point we wanted to address was the process in which this debate is taking place. Our group, as we have frankly acknowledged in our brief, is not workers' compensation specialists, but we have, over the last 15 years, addressed many issues relating to the overlaps and gaps among different disability compensation programs and have come to identify some of the issues common to all of them.

One of the unfortunate things, as is outlined in paragraph three of our submission, is that reform, or so-called reform, of disability compensation programs has always taken place in the way the current process is taking place

in that the programs are looked at one at a time and in isolation from each other. It detracts from the general principles; it detracts from looking at the issues raised by the overlaps among the programs and the gaps between them.

I certainly have advised many clients over the years where they are eligible or potentially eligible for three or four different programs. It keeps lawyers like me busy trying to figure out the interactions, but I think people could benefit if things were simpler and clearer. Also, too often the result of the so-called reform is simply an offloading of responsibility, for clients and for benefits, on to another program.

Our group has advocated a more comprehensive study such as a royal commission, and in fact would hope that the forthcoming royal commission on workers' compensation announced by the provincial government will at least take as part of its mandate seeing what could be done in a more systemic and organized way.

Our first topic, substantively, with regard to Bill 165 is inflation protection, which was of course just addressed in detail by the previous groups. Like the previous presenters, we are concerned about the use of de-indexation as an approach to cost control. It affects those more who are injured in the long term; it has a disproportionate effect on people who are younger when they become disabled.

The real impact on individuals is 20 to 30 years down the road and it means that there isn't so much of a constituency to fight it now. When people have been disabled for 20 or 30 years, we find that their interests are very rarely actively represented any more by unions or other staff organizations. There are really very few advocates for those individuals, and I think it's an easy way out to say, "Well, we'll just de-index the program and we'll worry about the effects 20 years later."

We are concerned not only with regard to this program but with what we see is a tendency to approach programs in this way. For well over a decade, under three different governments it was the practice to have an annual inflationary increase for social assistance. It was done every year, although it was not entrenched in legislation, and that has been discontinued by the present government.

Also, in the automobile insurance plan, while it's commendable that the benefits generally have been indexed, the one exception that was made was for those who are arguably the most disadvantaged. The \$185 monthly payment for those outside the labour force was given no inflation protection whatsoever.

De-indexation is seen as a way of generating savings. Because the estimate is somewhat close to \$18 billion, I guess other items are included in those savings, but that's the main one. But we think if you look at the system, if I can describe it that way as a whole, it's largely illusory. What really happens to long-term injured workers, if there are no supports, compensation and other supports, available from WCB, is that they will turn to other programs, like social assistance, long-term disability and other disability-related programs.

Ultimately, employers as taxpayers and governments will wind up either paying compensation for them out of another pocket or what may happen is that the person's disability is not compensated and then you have all of the social costs related to things like family breakdown and institutionalization. So if the perspective of more than a single program were taken, we would question that there is a true social cost saving even though the actual payments out from WCB may be less.

What we advocate of course are, as we've already said, a more coordinated approach to reform, to produce a more understandable system, one that is fair among different groups of people with disabilities and also one which better facilitates the return to employment.

At this point, I'll turn it back to Scott.

Mr Seiler: Something that is very much needed for people who are WCB clients and people who are consumers and people who are on other systems as well is many more choices than are given today. We need people to be able to have choices of where they would like to work, what kinds of work they would like to do, what kinds of training they would like to have. We're not just talking about income and income security here. We're also talking about getting people back to work as a primary mandate of the WCB.

We need a system that will retrain people into viable careers, that will not ghettoize people into careers that are not necessarily going to give them a high enough income to survive in the real world out there. We don't need McJobs; we need real jobs. Just as the rest of the people with disabilities need those things, people who are on WCB do too.

We also have some significant issues, I believe, with representation of people with disabilities on all forms of boards of inquiry, and the WCB is no different. We need proper representation of the people who are going to be served by the WCB. People who have disabilities must be the key players in running a system that is going to be for them. If they are not key players, then the system is really not for them and will never be able to serve their needs properly because the system will always not completely understand all of the needs that are out there. You need our participation, as people with disabilities and injured workers, to create systems that will work. That is the only way of creating a system that will work.

Most of the systems today that are being "reformed," like Mr Beatty is talking about, are being reformed with the participation of consumers and consumer advocates. I think it's about time this was spread into all facets of government.

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Ms Murdock: Thank you for your presentation. From your last comments, I'm taking it that you mean in the context of workers' compensation—I understand from your opening comments that you don't necessarily do all that much with it, but you're saying that the individual injured worker would determine their return-to-work and rehab program?

Mr Seiler: As much as possible, yes.

Ms Murdock: With the board and with the employer

and the health care practitioner or whatever?

Mr Seiler: The things that the person would want would be facilitated through the WCB, through the practitioners, through the rehabilitation people. It would be a facilitation, but it would be the person's wishes that would be the primary driver of that system and what the person would like. So if they would like to go back to school because the career that they had before doesn't suit them any more, for whatever reason, they have the ability to say and make that kind of choice. We're asking for people to have choices here.

Ms Murdock: Okay. Your point about the inflation protection has been made numerous times by other groups than yourselves. It's not that I'm in disagreement with you, but many of the other presenters take an opposing view, and I would like your comments, on the importance of the unfunded liability and how control of the board must be taken into account—financial control of the board.

Mr Beatty: Basically, we haven't looked in detail at the issues around the WCB unfunded liability or at costings or anything like that. As our presentation said, we'd much prefer, though, that the savings be generated through increasing the percentage of people who can be returned to meaningful employment. Clearly, that has potential for a lot more savings in the true sense than just reducing the benefits 20 and 30 years down the road. If even a modest increase in re-employment were achieved, you get the same savings without hurting people.

Mr Offer: Thank you for the opportunity of asking a few questions on your presentation. I would like to ask you a question, not necessarily based on your presentation but based on a paragraph the Minister of Labour delivered to this committee on the first day of hearings. I think it's appropriate. As we're now on the last day of public hearings, I'd like to get your thoughts on the phrase that appears in his presentation, which states, "I can state categorically today that Ontario's first-ever social democratic government will not reform the Workers' Compensation Board on the backs of injured workers." What is your reaction to the statement of the minister?

Mr Seiler: If de-indexation is going to happen, then it will be on the backs of injured workers but 30 years hence.

Mr Offer: I have no further questions to ask. I'd like to thank you for your presentation.

Mr Arnott: Thank you very much for your presentation as well. I'm not sure I have any questions. I think you outlined very clearly what your position is on the bill. Clearly, I think you're absolutely right that younger injured workers are the ones who have the most to lose with this change in the inflation protection.

Your mandate also includes other social welfare programs and studying that, and I think you're also right when you say that—well, if you look at an injured worker who may gradually lose his pension, have it eroded over time due to lack of inflation protection, there's a good chance that they're going to be applying for, say, the Comsoc family benefits program.

Mr Seiler: Most definitely.

Mr Arnott: Yes, and then money's going to be coming out of another pocket if they're eligible.

Mr Seiler: It's just a flipping of the responsibilities for the payments that are happening now through the WCB on to other places and other governments.

The Vice-Chair: On behalf of this committee I'd like to thank the Income Maintenance for the Handicapped Co-ordinating Group for bringing their presentation to this committee this afternoon.

NIAGARA DISTRICT INJURED WORKERS ORGANIZATION

The Vice-Chair: I'd like to call forward our next group, from the Niagara District Injured Workers Organization. Good afternoon and welcome to the committee.

Mr Don Comi: I'm going to make the introduction. My name is Don Comi. I'm president of the Niagara District Injured Workers Organization and treasurer of the Ontario Network of Injured Workers Groups. Karl Crevier is the president of the Ontario Network of Injured Workers Groups, and Lesley Penwarden is the recording secretary of the Niagara District Injured Workers Organization.

Ms Lesley Penwarden: I hope everybody's got their pens. Please understand that my involvement in compensation for the past decade has been purely volunteer. I'm paid as a secretary and person responsible for all accounting functions in an optometry office in Port Colborne. I had three late evenings and a couple of hours this morning to write this. There was no time to edit.

On the bottom of the first page, you will see "Most regressive aspects of Bill 165." Please strike that.

Preface: the Niagara District Injured Workers Organization was incorporated in February 1984 as the Welland District Injured Workers Organization. It organized loosely in the 1970s out of people who were finding they were not getting the rights they were entitled to under the law.

Niagara Injured Workers observes that any potential of Bill 165 to contribute to the development of positive change towards a truly equitable, progressive system was forfeited when the injured workers themselves were excluded from the process. You can't bridge a schism between society's espoused beliefs and its reality, its actualities, by restricting access, input and design of legislation to the status quo representatives on committees such as PLMAC. You missed your opportunity to correct the situation when you only held hearings in four cities.

Introduction: Niagara Injured Workers supports the position of the Ontario Network of Injured Workers Groups and others that Bill 165 in its present form is untenable.

This brief discusses the reasons PLMAC collapsed, the historic original social contract known as the Workers' Compensation Act, and since the committee has had numerous briefs discussing the perfidious nature of claims by parties crying financial crisis and hardship while clearly profiting, several copies of Ontario network, TIWAG members', CAW, OPSEU, the Ontario Social

Safety Network and others' research and recommendations outlining essential changes to facilitate acceptance of Bill 165, Niagara will then move directly to recommendations.

Failure and collapse of PLMAC: However well intentioned, the PLMAC concept was doomed to fail and collapse for numerous reasons.

The committee consisted of representatives of the status quo, two opposing factions who, more expressly in the case of labour, denied access to information and input to less affluent stakeholder groups on the basis that they "weren't experienced enough in the collect bargaining process."

1510

This is a monumental assumptive error. You can't put two groups who have been fiercely fighting for more than a century together and all of a sudden expect them to work in an enlightened, progressive manner. The PLMAC members themselves, in deciding their traditional pattern of collective bargaining was appropriate to the task, also made a monumental assumptive error.

Legislation is not a temporary bargaining agreement negotiable in one to three years and cannot be successfully treated as such. The bargaining agreement was already established in 1915, the social contract in which workers relinquished the right of legal action in return for a comprehensive no-fault insurance system funded by the employers responsible for and profiting by the damage to workers' health and lives.

Niagara Injured Workers cannot support the result of a process from which injured workers were excluded. Injured workers' two-decade-old issues were not addressed and the proposals constitute yet further regression and breach of the social bargain.

The Workers' Compensation Act, a historic social contract: Although Ontario was the first in Canada to legislate a compensation act, it was merely following the *Zeitgeist* of the early 1900s. Germany, just one example, had developed all-inclusive compulsory sickness and maternity, old age and disablement pensions as well as compensation for industrial accidents and disease and unemployment insurance by the 1880s.

It's interesting that more than a century later we have yet to equal our European and Scandinavian neighbours' level of social maturity, evolution of civilization and basic philosophy of justice. We blame this on the negative, disproportionate, atavistic influence exerted on our governing bodies and media by corporate enterprises.

Development of legal precedent in western civilization acknowledging employer responsibility based on ownership and control of the workplace expedited acceptance of a compensation act by Ontario employers. Why? Under these conditions the economic class structure status quo would be maintainable and the theoretical potential redistribution of wealth through legitimate civil suits averted.

What specifically is contained in these no-fault insurance contracts worth surrendering the right to sue?

—Recompense to the injured worker and his/her family;

—Accident prevention measures and health and safety programs;

—Prompt payment and service to reduce stress;

—Decisions made on individual case merit and justice less strict than legal precedent;

—The right of claim review at any time;

—Unlimited medical, surgical, hospital, nursing and medical rehabilitation services;

—Pensions to widows and dependant children;

—Rehabilitation as a priority and provision of the best available treatments to minimize disability;

—Any necessary training or vocational rehabilitation of the injured worker's choice enabling a return to gainful, sustainable employment; and

—Pensions to injured workers unable to return to gainful, sustainable employment.

Anything less is a breach of the social contract and initiates reclamation of the right of civil action.

Since its introduction, the act's been subverted, so much so that by 1980, Paul Weiler, an American, wrote in his submission, *Reshaping Worker's Compensation for Ontario*, to Robert Elgie, then Minister of Labour:

"Worker's compensation has now totally lost any legitimacy which it might have ever had. People no longer tolerate the inequities in individual cases which are produced by a system of average 'rough justice.'... The same act which offers only a facade of adequate compensation for real life economic losses also denies the right of access to the courts to try to recover the difference."

Injured workers, the so-called beneficiaries of the compensation act, have had their health, their lifetime earnings, their families, their self-worth, their very lives sacrificed to support profit margins and the lavish lifestyles of their transgressors.

The former Liberal government muscled through Bill 162, the most regressive piece of compensation legislation in recent memory, breaching many of the precepts of the social bargain. The Conservative government of the early 1980s is responsible for the present approach to funding, which created the artificial construct of the unfunded liability, now propagandized by the corporate media as provincial debt when in fact it is not legal for the accident fund to requisition funds from Ontario taxpayers.

Don't add to the travesty by failing to modify Bill 165 to incorporate the demands of the injured workers themselves. Do, please, incorporate the following recommendations, which have been put forward by numerous submissions, upholding the position of injured workers themselves, the missing component of Bill 165.

Mr Comi: The recommendations we have are:

Change the present, unsuccessful 1984 funding strategy to the current cost approach. This will eliminate the possibility of deficit and eliminate artificial constructs, such as guesstimates of future costs, presently known as the unfunded liability, being falsely treated as a debt.

Eliminate schedule 2, incorporate all employers in the accident fund in schedule 1 and extend the right of

coverage universally to the entire workforce. This will eliminate the finance department's worst problem, employer fraud, as well as reduce the need to investigate compliance.

Incorporate this government's position on equity by conferring full partnership with the other stakeholders through designated injured worker seats on the board of directors.

Remove deeming from the Workers' Compensation Act and replace it with gainful, sustainable employment as per the social contract.

Deliver the decades-old promise of job security or full compensation.

Accord independent, accountable, practising physicians the respect they are entitled to by eliminating unnecessary WCB doctors.

Increase penalties on employers who violate and endanger workers' health and safety.

Assessment rates should include a reflection of the employer's incorporation of up-to-date ergonomic equipment and health and safety efforts rather than the fraud-promoting claims rate.

Remove all reference to the present inappropriate application of the Friedland formula from the act and provide automatic cost-of-living adjustments to all claimants.

Utilize the Workplace Health and Safety Agency as the Workers' Compensation Board's agent of record to monitor all workplaces.

Provide the \$200 pension increase as a true pension increase and not as a supplement by adding it to all persons receiving permanent disability pensions.

Respect Canadians' right to privacy by restricting employers' access to medical reports directly related to the claim, with the injured worker's informed consent.

Change section 3 to prevent double recovery by rewording to "receiving compensation under workers' compensation law from another board's jurisdiction for the same injury or disease."

Change the purpose clause to state "full compensation," not "fair compensation."

Remove section 12 on the grounds it could be used by employers to neglect their moral and pecuniary obligations.

Provide any necessary training or vocational rehabilitation of the injured worker's choice enabling a return to gainful, sustainable employment.

The Minister of Labour should approach the Minister of Education to implement a grade 9 level compulsory credit course entitled "workplace rights and responsibilities" covering all workplace legislation, such as the Workers' Compensation Act, presented in layman's terms. This course should be taught in all educational institutions and streams of study and should include presentations by groups such as injured workers, labour, Workplace Health and Safety Agency representatives etc.

We further strongly appeal to your sense of justice to study and incorporate the recommendations of groups such as the Ontario Network of Injured Workers Groups,

Toronto Injured Workers' Advocacy Group members, CAW, OPSEU, the Ontario Social Safety Network and others representing the missing injured workers' component to Bill 165.

Finally, as an extraneous but possibly important suggestion to this government's experience with financial institutions, amend the Ontario Elections Act to state that any financial institution or bond rating body, either lending money to or making ratings on the government, may not make any form of political contribution and must be seen to be non-partisan.

We thank you for taking time to hear our submissions and hope you will give it serious consideration.

Before we open to questions, Mr Crevar has some comments he'd like to address.

1520

Mr Karl Crevar: Let me, first of all, say if the presentations by the injured worker community seem biased, it is because they are. Any decision that this body makes, that this government makes, that the Workers' Compensation Board makes, will have a direct impact on injured workers. We are the ones who are going to receive the brunt.

I want to state for the record and, Mr Mahoney, it's nothing personal, you made a comment yesterday on the injured worker presenters in the past who have stated—your comments were that they had called for the withdrawal of Bill 165. I hope it was just an error because that's not correct. What we have stated very clearly at this stage, before even the hearings began, was that the network does not support the bill in its present form and we wanted to use and we hoped to be able to use this forum to address to you our concerns and hope that this group here would sit around and make the necessary amendments that we are concerned with.

What I have seen in this process, it seems to me that the politicians are sitting there, one taking one position, one taking the other, and I think that's wrong. It's our lives, it's the lives of injured workers that are going to be affected by your decision. Give us the opportunity to talk to you. Make some recommendations. We have presented that there are some aspects of the bill that we will support, but there are other aspects that we will not support. That's why we're here. We're not here to take positions. The whole purpose is to develop a system that's fair to injured workers. They deserve that right.

I find that very appalling, over the last three weeks, to have heard the comments that have been going back and forth, and I can assure you, Mr Mahoney, you have the letter which you have passed around from Mr Rae making promises to employers about the purpose clause. Well, we have a letter that promised injured workers to eliminate deeming. We have a letter to that effect. But by the same token, we are critical of this bill because we are concerned about the Friedland formula. We would not support any bill that would cut benefits.

I think it's been clearly demonstrated by a number of presenters what that impact would be and we would hope in the course of this process that at the end of the day we are heard and that the appropriate amendments can be

made so that we can get on with our lives.

So with that, I will cut off. Remember one thing, and it hasn't been mentioned: Workers do not go to work to get hurt deliberately. If there's one person in this room or around this table who can tell me of an individual who goes to work to get hurt intentionally, not knowing the extent that they're going to be hurt, is going to impact for the rest of their lives, not only on themselves but their families, their friends and the whole community, that's a ludicrous suggestion. We do not go to work to get hurt.

Interruption.

The Vice-Chair: Order. As I've stated in the past, this is an extension of the House and outbursts from the audience aren't acceptable.

Mr Mahoney: Thank you for your presentation, all three of you. Karl, let me just be very clear on my concern and my question to injured workers and to unions who have come before us, particularly to some members from organized labour, from the CAW and others where they've outlined in one case, Local 444 in London, objections to 17 parts of this bill. My question is, that if you don't get the changes, and the same question to injured workers—I appreciate the fact that you're here to try to put forward your ideas. I respect the work that you do on behalf of injured workers. I know you're a very passionate man about it.

But if you don't get the changes that you're asking for, our fundamental question is, are you in support of this bill? Do you wish this committee to recommend, with government majority members or even support of opposition, that the Legislature put Bill 165 into law in its present form?

Mr Crevar: Well, let me reply to you again, Mr Mahoney, the same as I did with Mr Offer earlier on that same particular question, why are we here? Are we not here to attempt to put our concerns to you? We cannot come up—

Mr Mahoney: No—

Mr Crevar: We've stated very clearly, in its present form, we will not support the bill—

Mr Mahoney: That's fine.

Mr Crevar: —because of the Friedland formula. However—

Mr Mahoney: That's the point—

Mr Crevar: —we are in this process to attempt to convince you—

Mr Mahoney: Absolutely.

Mr Crevar: —to amend it, to change it.

Mr Mahoney: Absolutely. I totally agree with that.

Mr Crevar: I could not give you an answer now to say we will oppose it. We don't know. Hopefully, you will look at our concerns and make the appropriate amendments at the end of the day.

Mrs Witmer: The first presenter this morning indicated that, as opposed to introducing the Friedland formula, it would be better to reduce the benefits to 80% and 85%. What do you say to that?

Mr Crevar: Well, my only comment is, again, as I've

indicated earlier—and I find it troubling to have those types of comments. I shouldn't say the comments, but the presentations that were made, it should not be a guise—and this committee should not look at it as a guise that lowering from 90% to 85% would be better than the Friedland formula.

Injured workers deserve, under the act, full compensation, not any reduction. I think you've heard from many presenters, from injured workers groups how their lives have been impacted because they're not getting what they're entitled to. We will not support any reduction of any type of benefits to injured workers that they're entitled to.

Mr Will Ferguson (Kitchener): Thank you for your presentation. As you are well aware, the government has tabled this bill. We're having discussions on it. We're listening to all the concerns that are being expressed. As you're also aware, the Liberal party has suggested that the Friedland formula ought to be adopted right across the board for all pensions. The Conservative Party has taken a different stance. They suggested that the level of benefits ought to be reduced for injured workers. Just so everybody knows exactly the positioning that's taking place here.

There is an enlightened school of thought out there that suggests that this in fact is not a government debt; it is in fact an employer debt. Most of the responsibility ought to be put back on to the employers to take care of the unfunded liability. I would like to know what your thoughts are on that.

Mr Crevar: If I may comment, our position has been very clear. I hope I've made it very clear. It's the employers' obligation to fund the system.

I think what hasn't come out here in many cases when we've talked about the cooperative approach—and I agree with a cooperative approach. But how can we as injured workers rely on a cooperative approach when what we have seen through this whole process is three occasions where the employers have walked away, and as most recently have walked away from participating in the vocational rehabilitation advocacy committee? Why? When we talk about a cooperative approach, attempts are being made to address some real, real problems. How can you do that when you have a negative side saying, "No; if we don't get our way, we will not participate in this process"?

The other factor I'd like to leave you with is, when we talk about assessment rates and the unfunded liability, are those costs not absorbed in consumer goods? Are they not absorbed in the benefit packages that are provided to their workers? I can assure you, if you look deep enough, you will find those costs are absorbed in those benefits and the consumer is paying for the cost of the assessment rates.

The Vice-Chair: On behalf of this committee, I'd like to thank the Niagara District Injured Workers Organization for their presentation to the committee this afternoon.

Is there anybody here from the Canadian Union of Public Employees, Local 1750?

1530

Mr Mahoney: On a point of order, Mr Chair: While you're waiting for a response there, I'd just like to add into the record, the last presenter made comments about the Liberal government muscling through Bill 162 and the Tory government's record in the 1980s. They didn't include the following, which is part of their submission. It said also, "Don't add the" current "government elected on the 'Agenda for People' to the list of minions serving concentration of capital to the avaricious privileged few at the expense of not just injured workers, but in graphic terms, at the expense of the depletion of planet Earth itself." I just wanted that on the record.

ONTARIO LEGAL CLINICS
WORKERS' COMPENSATION NETWORK

The Vice-Chair: We'll call forward our next presenters, from the Ontario Legal Clinics Workers' Compensation Network. Good afternoon and welcome to the committee.

Mr Terry Copes: I'm Terry Copes from the Sudbury Community Legal Clinic. To my right is Andrew Bomé from McQuestern Legal Services in Hamilton. We are appearing on behalf of the Ontario Legal Clinics Workers' Compensation Network.

The network is an organization made up of representatives from legal clinics from each region of the province which do workers' compensation cases. As such, we bring a perspective which isn't just narrowed to one area of the province but is aware of the problems as they affect injured workers throughout the province.

I won't be following exactly my brief today. Basically, I'll be addressing a couple of points; namely, the \$200 benefit. Also we'll have something to say about mediation, while Mr Bomé will talk about the Friedland formula and de-indexing.

The \$200 benefit certainly is looked forward to by many injured workers in the province. Any additional money is eagerly looked forward to by many injured workers in the province who have been forced into poverty as a result of their injuries. That being said, that does not mean we are entirely happy with the way that the \$200 benefit has been structured in Bill 165.

In particular, we have some concerns over how the \$200 is being given, and that is, being tied into the subsection 147(4) supplement. By doing this, it puts the \$200 additional benefit in jeopardy for any injured worker who gets it. The reason for this is because of the board's practice, on the two- and five-year reviews of the supplement, of cutting off many people who were initially given the supplement when there has really been no change in their circumstances. Certainly, we saw a lot of this occurring on the original two-year reviews of those supplements.

In effect, this additional benefit is a supplement to a supplement. We have a problem with that. What we suggest as a solution to that would be, instead of having this tied into subsection 147(4), tie it into the sections which deal with the granting of the permanent disability pension. This I think would certainly make a lot of injured workers feel more secure about this benefit.

The other problem we have with the way the \$200 benefit is being given is that numerous groups are being excluded from eligibility for this benefit and some of these groups shouldn't be excluded. There's, for example, no rational reason for excluding workers who turned 65 prior to July 26, 1989, from eligibility for a supplement. In fact, many of those workers need the supplement most because they will tend to be injured workers who were hurt back before full indexing was put into place in 1985. Many of these injured workers have already seen their permanent disability pensions eroded, particularly those injured workers who were hurt in the 1950s and 1960s when there was absolutely no indexing in place.

An example of this, and this actually ties into another group who won't be able to get the extra \$200 and that's 100% pensioners. We know of an injured worker who was hurt in the 1960s and is in receipt of 100% pension but, because of the lack of indexing, is getting less money per month than another worker injured at the same job site, doing the same job he was 20 years later, who is in receipt of a 30% pension from the board. The only reason for that is because of the effect of not having those benefits indexed throughout the 1960s and 1970s. This person got hit then, will get hit again—won't get hit again in terms of the Friedland formula because they're protected because of the 100% pension. If he was getting a 90% pension, he'd be hit again, but he's not eligible for the \$200 and yet that person certainly could use the \$200 as much as anyone else who will be granted it.

There are other groups who are going to be denied access to the \$200 the way the bill is currently worded. Another example is Johns Manville asbestos victims and Elliot Lake uranium miners who receive a supplement very similar to a subsection 147(4) supplement under a special rehabilitation assistance program. Because they're getting that supplement, they aren't eligible for the subsection 147(4) supplement and thus would not be eligible for the additional \$200 benefit.

There are also many cases of injured workers who, for one reason or another, have not been deemed by the board to be eligible for a subsection 147(4) supplement, who have not returned to work, who have not had their earnings restored, who are living off of their meagre pensions from the board plus CPP disability and they will not be eligible for this as well.

The solution would be to not tie the \$200 into the eligibility for subsection 147(4). As I say, tie it into the receipt of the permanent disability pension. If you are concerned about giving it to people who may be working and earning a decent wage, there can be ways of accommodating that simply through having it that if the person's current earnings, combined with their pension, are greater than their adjusted pre-accident earnings, they won't be eligible for it. But don't deny it to everyone who can't get a 147(4), because that is totally unfair and is going to leave in need many injured workers who certainly can use the money and are just as deserving as those who will be eligible for it.

I know this question's been asked of some other presenters today whether we are in favour of scrapping the whole bill. We are not. We want the \$200 given to

injured workers. They have been waiting for many years for this. This has been something which injured workers have been lobbying for as long as I can remember, and certainly we don't want to see this killed, even if the rest of the bill is.

1540

Turning now to mediation: I know that alternative dispute resolution is currently a very sort of hot and popular thing in legal and governmental circles now and, generally speaking, we have nothing against mediation or alternative dispute resolution; however, we have serious reservations about the mediation provisions contained in Bill 165.

The main root of our problem with the mediation provisions is that most of the listed items for mediation are not areas where, in my experience, the primary dispute will be between the injured worker and the employer. Instead, the primary dispute, in our experience, is often on these issues going to be between the injured worker and the board's vocational and rehabilitation department.

In fact, we often run into cases where both the injured worker and the employer are asking the voc rehab department for something and the voc rehab department is not willing to give it. In that kind of case, having the board act as a mediator in a dispute between the injured worker and the board itself simply does not make any rational sense. The board is not a neutral third party in these disputes, but is rather a party to the dispute itself, and you don't let a party to a dispute mediate that dispute because that is not going to be fair mediation.

We therefore recommend that if mediation is going to remain in Bill 165, amendments be made to have mediation only apply in cases where the dispute is between the injured worker and the employer and not in cases where there is an element of a dispute between the injured worker and the board. Often you'll run into cases where there may be a dispute between the injured worker and the accident employer, but there's also an element of a dispute with the board there as well. It simply is blatantly unfair to the injured worker to have this so-called neutral mediator there, supplied by the board, when the board has its own interests to support in the dispute.

The other concern we have with mediation is simply with the fast-tracking of mediation. We can see reasons for that and we're all in favour of disputes being settled quickly. Right now, injured workers, generally speaking, cannot obtain representation all that quickly. Certainly, in the Sudbury area and throughout northern Ontario, the office of the worker adviser is running a waiting list often up to two years before they will open files. Our own legal clinic maintains a waiting list which is running approximately 18 months before we will look at workers' compensation files. This is simply due to the workload pressures we have.

With recent talk of cutbacks to legal aid, one of the suggestions has been that legal aid certificates no longer be issued in workers' compensation cases. This will leave injured workers, either in a non-unionized setting or in settings where they are unionized but the union doesn't handle workers' compensation matters, often scrambling

to get some kind of representation. If mediation is fast-tracked, they may not be able to obtain representation for that mediation process.

That can constitute a real problem, particularly since the board is there to protect its own interests and certainly knows compensation matters in more detail than the average injured worker who isn't used to the system or is new to the system, and employers also are in a much better position to go off and get legal representation. We have real concerns about injured workers being subject to mediation where they are the only party there who really isn't having independent representation. That is a real concern we have.

I'd now like to turn it over to Mr Bomé to make some comments on de-indexing and the Friedland formula.

Mr Andrew Bomé: For me, the de-indexing provisions of this bill are probably the worst parts of the bill for injured workers. It's for that reason that we're adamantly opposed to any forms of de-indexing for any injured workers. I say that because we have experience; we've met injured workers who were affected by the lack of indexing of pensions in the 1970s. Mr Copes spoke about one case where a worker with 100% pension wasn't getting the same as a worker who was injured 20 years later with a 30% pension. I myself represent two injured workers working at very high wages in the 1960s who are now receiving 70% pensions. Both their pensions are less than \$1,000 per month.

What this bill does is, it proposes to eliminate full inflation protection for many groups of injured workers. There are two groups of injured workers I'd like to talk about in particular who are being affected by the lack of full indexing. The first is injured workers who turned 65 prior to the passage of Bill 162.

The way this bill is structured, for a pensioner who's not receiving 100% pension to receive inflation protection they must receive the \$200 benefit. As Mr Copes indicated, injured workers who turned 65 prior to July 26, 1989, will not receive that \$200. Therefore, they will not receive full inflation protection. It's inconceivable to imagine why this particular set of elderly injured workers is being hit by de-indexing one of their only sources of income they have. Given the age of many of these workers, these workers here will not only face de-indexing of their pensions in the future, they are also likely to have been injured prior to the implementation of full indexing in 1985. So they've had significant portions of their pensions de-indexed in the high inflation era of the 1970s. The easy solution to that is to give those workers the \$200 benefit and then they don't have to worry about de-indexing.

The other group of injured workers being affected by de-indexing is workers in receipt of future economic loss awards that aren't 100% future economic loss awards. These injured workers now are not being compensated based on any actual wage loss. The amount of their future economic loss award is based on earnings from wages that they don't receive. Statistics from the board indicate that 78% of all workers receiving future economic loss awards at the two-year review don't have jobs.

These injured workers here who are just receiving

small FEL awards plus with no income are being impoverished, and having the purchasing power of their benefit reduced year in, year out by partial de-indexing is just simply wrong. This bill contains a double whammy. These workers here who are being impoverished by low FEL awards and are having the purchasing power of their FEL awards decreased by de-indexing will also, by the mechanics of the reviews at the two-year and the five-year award, in times of high inflation have their future economic loss awards actually reduced.

It cannot be seen as right to have an injured worker who's being impoverished by an inadequate FEL award, having the purchasing power of that FEL award slowly reduced by inflation, to then have it cut twice in their lives. That's just simply wrong.

1550

What this bill does with these workers who are receiving future economic loss awards—we're creating another group of injured workers who will get an inadequate benefit from the board and then will, as time goes on, become slowly impoverished, just like our clients who were injured 20 years ago who are now in poverty. That's not going to be a cost saving. It has to be remembered that any injured worker who is inadequately compensated by the workers' compensation system will inevitably end up going on welfare, family benefits, and it's just simply a shifting of responsibility of the upkeep of these injured workers from the employers of Ontario, who caused these workers injury, to the taxpayers of Ontario. That's not good.

The Acting Chair (Mr Randy R. Hope): We have approximately 30 seconds per caucus. Miss Witmer?

Mrs Witmer: No questions, thank you.

Ms Murdock: Do I get her 30 seconds?

The Acting Chair: Thirty seconds.

Ms Murdock: We had a presentation in Ottawa made to us by one of the employer groups actually where the Quebec model of mediation was suggested, because they saw problems with the mediation section as well. Their idea was, unlike the Ontario ones who wait for a problem and then one of the parties applies, the mediators there initiate the mediation. I guess the word really isn't "mediation," but I'm wondering what you think of that concept.

Mr Copes: Not being totally familiar with the Quebec system, I can't really comment in any detail. What I can say is that if mediation is going to be used, outside mediators should be used rather than board employees as mediators.

Ms Murdock: My fear there is, after Bill 162 we had a new growth industry in consultants—

The Acting Chair: I said 30 seconds for a comment, not for debate.

Ms Murdock: —and after Bill 165 we'll have a new growth industry in mediators.

Mr Mahoney: That's for sure.

Ms Murdock: That would be my concern.

The Acting Chair: Mr Mahoney, you have a question?

Mr Mahoney: Yes. First of all, you don't clearly say it and I'll give you a chance: I'm assuming if you don't get the changes you want, particularly to Friedland, that you're opposed to the bill. But my question would be, you suggest that there be no purpose clause whatsoever. There have obviously been suggestions that financial responsibility be included—not be the only item in the purpose clause, but be included—and included with that would be the requirement for compensation, everything that's laid out in the purpose clause as it sits now, and then the interpretation of future benefits etc, etc, as they relate to the purpose clause.

Do you think it's possible that including financial responsibility in the purpose clause—and I recognize you don't want one at all—could actually backfire on the employment community and require the board to then increase rates if it's going to be truly financially responsible in giving benefits or increasing benefits?

Mr Copes: That's a possibility, but I see as much more likely that the purpose clause is going to be used to cut back benefits to injured workers.

Mr Mahoney: You're opposed to the bill in its present form, are you?

Mr Copes: I addressed that in my submission where I said we want the \$200 to go ahead regardless.

The Acting Chair: I'd like to thank the Ontario Legal Clinics Workers' Compensation Network for its presentation today.

KIRAN SAWHNEY: RAVINDER SAWHNEY

The Acting Chair: The next presenter is Kiran Sawhney. Make yourself comfortable. You have 20 minutes for your presentation; introduce yourself for Hansard and continue whenever you feel comfortable.

Mrs Kiran Sawhney: My name is Kiran Sawhney and I'm an injured worker for the past four years. With me is my husband, Ravinder Sawhney, who has acted as my counsel in all the proceedings with the board and in the courts and will answer any questions after for clarification.

The purpose of my presentation today is to highlight the lack of accountability at both the WCB and the WCAT—the appeals tribunal—levels of the officers responsible for adjudicating the claims for injured workers. I will obviously be speaking personally about my experience with the WCAT and my own case.

When I was cut off from benefits without any opportunity from one of Canada's largest employers to rehabilitate vocationally, an appeal not only met with stiff resistance from the employer but, very surprisingly, from WCAT.

I had raised the issue of bias and misconduct and that was obviously not taken very well with WCAT. The chair protected senior tribunal counsel responsible for investigations and setup of hearings in my case and stated there is no bias in the evidence that showed on the part of the counsel, such acts as deliberately not placing my requests before the panel, pretending that my letters did not reach the tribunal, treating me as a criminal by investigating against me but not investigating the employer, forcing me to produce irrelevant documents through a threat of

subpoena and not even accepting my request for documents from the employer.

Because the employer is a huge department store, the tribunal has shielded it and is obviously influenced by the corporate power of the store. The senior tribunal counsel is a past manager of the office of the employer adviser of the Ministry of Labour and is obviously biased against injured workers struggling to have benefits restored.

The courts in this particular case are also biased against myself as an injured worker. Not a single case has been successful at the Court of Appeal in favour of injured workers. As a group, injured workers are extremely poor and have no recourse to the legal system to rectify the biases against them at the WCB level and, as is obvious from my case, even at the WCAT level. Only a massive program to challenge the injustices of WCB and WCAT in the courts can hopefully result in some of the cases being successfully pleaded in favour of injured workers before some judges whose backgrounds lend them to decisions of sympathetic consideration of the pain and suffering of injured workers.

What was shocking in my case is that my allegations were not considered by the court, which simply stated that the same panel against whom I am alleging bias and misconduct adjudicate in its own cause the allegations against them. This is contrary to the common law principle that no one can be a judge in his own cause. The court is well versed with this principle but nevertheless decided to shield the misconduct of WCAT's top officials.

The Court of Appeal has even decided that I should pay legal costs to WCAT for bringing a review of its decision. It is a shame as well that WCAT hired an outside law firm to defend its senior officers against my allegations, this in the face of continuing cutbacks to the benefits of injured workers and the accepted need for trimming the WCB deficit. It is most alarming that the highest appellate body under the act should abuse the public funds to hire a big Bay Street law firm to intimidate an injured worker and to prevent her from making allegations of bias and misconduct on the part of several of its top officials. This misappropriation of funds must be prohibited under new legislation.

This is particularly significant because the injured workers can never have similar access to Bay Street law firms to even make the allegations, let alone obtaining justice. To cap it all, the agency, WCAT, knowingly selected a member of the board of directors of my new workplace, a former Ontario human rights chief commissioner, to represent them, leading obviously to my termination of employment from the new workplace, where I had with great difficulty managed to find a job after the store refused to take me back.

The court did not address the conflict of interest that is so obvious for a former human rights chief commissioner, under whose term the Ontario Human Rights Commission suffered tremendous public disgrace.

There is thus an order of costs outstanding against me. This is the legal system's response to my act of bringing forward allegations of bias and misconduct against senior WCAT officials in the sanctity of the court. In my severe

distress, it is now upon me to find the funds to bring an appeal to the Supreme Court of Canada. I am losing hope in the legal system and am shocked that WCAT can, through its top officials, manipulate all rules and regulations to ensure its unaccountability.

1600

What is also distressing is that the Minister of Labour, the Premier of Ontario and the Lieutenant Governor have all turned down my request for a public inquiry into the allegations that are of tremendous public interest to the injured workers, as well as to the taxpayers of Ontario. It is obvious that the entire system of adjudicating the claims of injured workers is subject to the control, manipulation and influence of the big parties to clog every avenue of justice for the handicapped in the province of Ontario.

It is my shocking experience that the courts are no different from political appointees in their transparent protection of such big parties. The court ordered costs against me to intimidate me in the hope of shutting me up. WCAT, for its own part, ironically seeks to fill its coffers and reduce its deficit through legal costs against an injured worker. Some time back, WCB's former chief was let go; I think it's now time for WCAT's chief to go.

The amendment I propose for this bill is that there be a section in the act stating that no funds of the WCB and the WCAT shall be paid to hire outside counsel in any matter concerning, directly or indirectly, the conduct of any of its officers, and that no court of law shall award any costs against an injured worker for bringing into court any action in the nature of a judicial review, proceeding or an appeal with respect to any matter arising out of a claim for benefits under the act.

It needs no genius to figure out that injured workers inherently as a group do not file frivolous appeals, with no funds at their disposal to even initiate a court proceeding. The act does not promote accountability of officers discharging serious duties affecting the livelihood of those deprived of a fair means to meet the economic challenges of life due to handicap. Such accountability is the key to a just and fair system of adjudicating the claims of injured workers in Ontario.

Ms Murdock: I don't want to get into the facts or anything, but I'm surprised that you would think that a Court of Appeal would—I mean, from your second page, you're basically saying that the Court of Appeal is, with bias, making a decision in favour of WCAT against you, and I am surprised that you would make that—

Mrs Sawhney: It was surprising to me as well, and I think you have to look at the particular parties and the personalities that are in this case. I will not mention names at this point; it's all in the court documents. It would be no surprise to learn that the parties that are involved and the names that are involved in this particular case—that a Court of Appeal and the justices sitting on that particular bench would find no remorse in siding with the parties I have alleged misconduct and bias against. It's very surprising to an outside party listening to these kinds of details. This kind of thing, in any normal setting, you would expect not to happen.

I am an injured worker with absolutely no power in the system and I have alleged some very serious allegations against some of WCAT's very top officials, including the chief, and naturally it is my opinion, through my experience, that these parties have very well influenced the justice system. Now you're seeing that bias occurred with me at a level where the merits of my case have not even been heard, so I have been stopped in an avenue right at the first level.

Ms Murdock: Now, on your amendment that you're proposing, you're saying that in all instances, regardless, WCB or WCAT would not use their own in-house counsel.

Mrs Sawhney: Outside.

Ms Murdock: Or would use their in-house counsel rather than outside counsel.

Mrs Sawhney: Yes.

Ms Murdock: I don't think there's any section that applies under Bill 165.

Mrs Sawhney: Well, it's not addressed. If they can use public funds to go get one of the biggest law firms in Toronto to allege against an injured worker, I have no power, because this is an intimidation tactic.

Ms Murdock: No, I understand from you—

Mrs Sawhney: So if those funds are misappropriated, then there should be something in the act that says injured workers have the same access to the same kinds of legal systems through funds that are going to be given to injured workers, which obviously would not happen. But at the same time, injured workers are always in a position of subordination in the sense that they don't have the power, the access and the money when you're dealing with agencies that are this big.

Mr Mahoney: I don't really have any questions. I guess I'd just make a comment that sometimes agencies of this size can afford to hire almost an unending stream of in-house attorneys, and seem to do so in many instances, and maybe the reverse would be as appropriate: They should fire all their in-house staff and only use outside legal assistance when it's needed.

But in all fairness, the second part of your request, that we make some kind of amendment that directs a court on awards or costs against any appellant, is totally out of line, out of the purview of this committee and even, frankly, I think out of the purview of the Legislature. That's a justice matter that we have no jurisdiction in.

Mrs Sawhney: The point here is to make you aware of what is going on.

Mr Mahoney: I appreciate that.

Mrs Sawhney: Not only that, I think the act doesn't take into account any funds going towards outside counsel for their in-house counsel if you're defending. That is not addressed at all because this is not something that occurs on a regular basis. So that, at some point, I think has to be addressed, that this can happen; if people are nervous enough about the allegations, what length they will go to to keep injured workers quiet, and if there's any other technicality—

Mr Mahoney: I'd just tell you, by the way, that it

happens with the Ontario government, it happens with municipal governments, it happens with the federal government, it happens with large corporations that have legal staff in their employ. Very often the legal staff that the particular organization has in its employ is not specialist or not fully acquainted with the law—

Interjection.

Mr Mahoney: —let me finish—as it pertains to a particular case. In many instances in my experience in 10 years on municipal council, we hired outside legal staff to fight cases and appeals and all kinds of things. That's our right and responsibility to the people who pay our bills, in that instance the taxpayers of Mississauga. In this instance it's the ratepayers who pay the bills at WCB and WCAT.

My point is, I think your request is outside of the purview, and I appreciate you bringing your concerns to the attention of the committee.

Mr Ravinder Sawhney: Can I just make a brief comment? There is a section in the Workers' Compensation Act that no judicial review shall be brought in a court of law in respect of any decision made by the Workers' Compensation Appeals Tribunal, since that is considered to be the highest body, and no injunction, for that matter, can be sought. A section such as that, on the very face of it, legally, as we call it, a prohibitive clause, protects the agency to an extent that even the courts do not like, which is why the courts have an overriding concern and say that if it's patently unreasonable, such a clause does not have validity even though it's in a statute.

If the government can put a statutory clause which shields the Workers' Compensation Appeals Tribunal to such an extent, definitely this committee has within its purview the jurisdiction to promote such a clause in favour of the kind of costs which Kiran Sawhney has suggested, that no order of costs be awarded against an injured worker.

Obviously you're right in saying the courts have jurisdiction and nobody can take away the jurisdiction of a court. Just as courts have jurisdiction with respect to the patently unreasonable segment of the section that states that judicial review cannot be sought, in the same way, in an appropriate case, the courts can interfere.

There's nothing wrong with a section stating that costs should not be awarded by a court. Simply because, just as the speaker before rightly said, nobody purposely gets injured, it follows logically that nobody purposely goes for a frivolous appeal if the person is an injured worker. Once we accept that assumption, it is possible to say that no costs should be awarded, and obviously any court can interfere with such a legislative purview.

1610

Mrs Witmer: Thank you very much for your presentation. There's a different perspective than what we've been hearing from injured workers, and I think, unfortunately, what you've indicated does happen. There is an attempt at times to intimidate the injured worker and prevent that individual from pursuing the case and the appeal further. I would agree with Mr Mahoney; I'm not sure how much we can do in this particular regard.

How long have you been out of work? That was the one question that wasn't answered here. How long have you been fighting this?

Mrs Sawhney: Four years, but in the interim I did get employed through my own efforts in 1993, and because the tribunal very maliciously sought to continue fighting me with outside counsel, hired one of the directors, therefore I lost my position that I did have. So I have been effectively out of work since May 1993.

Mrs Witmer: You say you effectively lost the job that you had. What would motivate that employer then? On what grounds could that individual let you go, the second employer?

Mrs Sawhney: The second employer? I was pregnant at the time and was leaving on maternity leave, with the very clear understanding that I would have a job when I returned. Two months later, when I went to go back to the position I had, I no longer was welcome back.

Mrs Witmer: Thank you very much for bringing this to our attention. I wish you luck.

The Vice-Chair: Mrs Sawhney, on behalf of this committee, I'd like to thank you for bringing your presentation to this committee this afternoon.

ONTARIO PSYCHOLOGICAL ASSOCIATION

The Vice-Chair: I'd like to call our next presenters, from the Ontario Psychological Association. Good afternoon and welcome to the committee.

Dr Warren Nielson: Mr Chair and members of the committee, I am Dr Warren Nielson, past-president of the Ontario Psychological Association. With me is Dr Ruth Berman, executive director of our association.

The Ontario Psychological Association is a voluntary organization representing the profession of psychology in Ontario. Our membership of approximately 1,400 members includes psychologists, psychological associates, psychometrists and graduate students in psychology. We are pleased to have the opportunity today to appear before you regarding amendments to the Workers' Compensation Act.

Psychologists have historically played an integral role in the provision of health care services to injured workers. These services have included both general diagnostic assessments and special assessments such as neuropsychological evaluation of traumatic brain injury and psychovocational evaluation of occupational and rehabilitation potential. In addition, psychologists commonly treat WCB clients for conditions such as post-traumatic stress disorder, chronic pain syndrome, depression and anxiety disorders that have arisen as a result of workplace injuries.

Notwithstanding our extensive and long-standing involvement, neither the current act nor Bill 165 recognizes the involvement of psychologists historically in this system. Our efforts to have current practice reflected in statute did not originate with the present bill. Identical concerns were raised during 1988-89 with the introduction of Bill 162. Despite a general endorsement by members of this committee and other members of the Legislature, our amendments were not included in that bill. Thus we are here today to both reiterate our continu-

ing concerns about the Workers' Compensation Act and to share with you our specific comments with regard to Bill 165.

In spite of the sweeping changes initiated with the passage of the Regulated Health Professions Act, RHPA, the current WCB act and Bill 165 do not reflect the reality of current health care practice and continue to be outdated and inconsistent with other existing health care legislation. The RHPA introduced three fundamental changes to the way health care services are delivered in this province: first, increased public accountability by health care providers; second, recognition of the expertise of a greater range of health care professions; and third, increased freedom for consumers to choose from among the regulated professions.

The RHPA was also intended to create a more equal playing field among the professions, in contrast to the effective monopoly accorded some professions within the old legislation. Unfortunately, the current Workers' Compensation Act and Bill 165 perpetuate the outmoded approach that existed before RHPA. Specifically, many provisions make reference exclusively to physicians when this is no longer appropriate, given the RHPA and the particular range of health needs of injured workers.

We would like to note that the OPA supports most of the provisions in Bill 165. In particular, OPA supports those amendments directed at making the board more fiscally accountable. We believe that the clarification of worker and employer responsibilities concerning vocational rehabilitation services is in everyone's interests. The introduction of mediation services designed to facilitate resolution of disputes about vocational rehabilitation, medical rehabilitation, worker cooperation and employer obligations are also a constructive step forward. We also support the duty imposed on the board in subsection 15(3) to monitor "so that generally accepted advances in health sciences and related disciplines are reflected in benefits, services, programs and policies."

However, we would also point out that in spite of the board being required to integrate advances made in applicable disciplines in the interests of efficiency and effectiveness, the act itself, as well as Bill 165, largely ignores the roles played by non-physician providers. This contradiction is illustrated in, for example, subsections 8(2) and 8(3), which stipulate that information provided by physicians is available to the board only with the consent of the worker, and only physicians may be reimbursed for the provision of these reports.

Similarly, subsection 9(5) stipulates that, where possible, the worker's physician should be involved in designing and providing a vocational rehabilitation program.

In addition to physicians, psychologists and other health care practitioners are routinely asked to provide clinical information about injured workers. It is our view that in these circumstances workers are entitled to equal protection, no matter what type of health professional they're seeing. The requirement for consent should apply to all regulated health professions. Under the current legislation, workers abrogate their right to hold information obtained about them by a psychologist as confiden-

tial. As a matter of simple fairness, all professionals who are asked to provide such reports should be compensated.

Subsection 9(5) poses a similar problem. Although we recognize that the intent of the bill is to encourage a more integrated approach to vocational rehabilitation, the exclusion of other health care providers precludes such integration and ignores the fact that many workers may have non-physicians participating in their care or as their primary care provider. Moreover, subsection 9(5) fails to recognize the particular expertise of psychologists and other rehabilitation professionals in designing and providing such programs.

The Ontario Psychological Association therefore recommends changes to Bill 165 such that, first, subsection 8(2) be amended, replacing the word "physician" with the phrase "health care practitioner"; second, subsection 9(5) be amended by replacing the word "physician" with the phrase "appropriate health care practitioner"; and third, section 14 be amended by replacing the term "medical information" with the term "health care information" and the term "medical restrictions" with "health restrictions."

These amendments would more accurately reflect both the manner in which health care is, in reality, delivered to injured workers and the fact that health care is now universally defined as more than just physicians' services.

Bill 165 should also include additional sections that amend the current Workers' Compensation Act to remedy problems that we've raised in the past. Despite the definition of "impairment" in subsection 1(4) of the act which included "any physical or functional abnormality or loss including disfigurement that results from an injury and any psychological damage arising from the abnormality or loss," section 42 enables only medical practitioners to conduct assessments of impairments, irrespective of whether the consequences of an injury are physical or psychological.

Although the term "medical practitioner" is not defined, the intent of the legislation appears to restrict such assessments to physicians. This is inconsistent with recent changes made in workers' compensation laws in other North American jurisdictions and with the treatment and rehabilitation provisions of the Ontario automobile insurance act. In the latter case, psychologists are accorded the authority to diagnose psychological disability for purposes of entitlement to benefits.

1620

We would also recommend that Bill 165 further amend the Workers' Compensation Act such that under section 42 psychologists are included as health professionals who can assess worker impairments. This would allow psychologists to conduct assessments of cognitive and emotional impairments when these fall within the scope of the practice of psychology. All of the provisions in this section related to medical practitioners should be applied to psychologists and other regulated health professionals. Thus, the term "health care practitioner" should replace instances of "medical practitioner" throughout this section.

The definition of "health care" in subsection 50(2) of

the act is antiquated and should be amended so that it is consistent with the principles and provisions in the RHPA. We would propose the following definition to ensure in law that no injured worker will ever be inadvertently denied a necessary health care service:

"In this act, 'health care' means those services provided by practitioners regulated under the Regulated Health Professions Act (RSO 1991), hospital services, such artificial members or appliances or apparatus as may be necessary as a result of the injury and the replacement or repair thereof when deemed necessary by the board."

Again, speaking for our association, we very much appreciate having had the chance to express our views to you today, and we would be pleased to answer any questions that you might have.

Mr Mahoney: Thank you very much for your presentation. First of all, I want to tell you that generally I agree with the intent of your amendments in relationship to the words "health care practitioner." We've heard from others. Dr Berman, you and I have talked after my report was put out, and we failed to connect in some areas, but I think it makes a lot of sense. I think the solution to many of the problems at the WCB is recognizing the difference, and it's already been recognized in the amendments to the RHPA; it just doesn't quite go far enough to follow through in the process. So we'll be drafting some amendments that I think will take care of most, if not all, of the concerns you express there.

I want to ask you, however, about the difference between psychological disability and stress. You are the people who scare the devil out of the employers, who say that stress is going to now be compensable and how do we determine how stress occurred, where it occurred, who caused it, what it is, all of those things that laypeople like myself and others are very unclear about. I assume that in relationship to the automobile insurance act in some of these other jurisdictions that you talk about the term "psychological disability" is much broader than just stress, could result from some form of trauma or something along those lines.

Talk to me about the difference between stress on its own and psychological disability or impairment, how it's caused, how you define it and how you don't open an incredible can of worms with this specific problem.

Dr Nielson: The board and committees such as yours can decide what is covered and make recommendations about what is covered by the WCB. We're concerned about an equal playing field in terms of who makes the decisions about what is already covered. What you're referring to, I think, is probably the issue of chronic occupational stress and whether that should be covered. I don't know if that's something that you're considering including in this act. I didn't think so.

Mr Mahoney: No. Maybe you didn't understand my question. You're absolutely right that I'm referring to occupational stress, but what I'm trying to get at is that I recognize there are a lot of ways you and other health care providers could help in solving problems in rehabilitation. So I acknowledge that. The concern that we hear, however, about opening the door to your profession in a broader sense is the issue of occupational stress. We can

hide from it and pretend, "Well, we're not really talking about that," but ultimately that's what we're talking about. That's what we hear from labour that they want included and we hear from employers that they don't want included.

Dr Ruth Berman: I'd like to respond to your question. Our references here to psychological impairment or psychological disability are not specific to the topic of occupational stress. That really is something quite separate from what we're talking about here. What we're talking about here is for workers, the majority of whom, subsequent to a physical injury—I'm not talking about chronic occupational stress—will encounter psychological difficulties in response to having had a physical injury.

I should mention, just parenthetically, that my own background is as a rehabilitation psychologist. Typically, with most of the people I see who have had difficulty returning to work, it often is not because of the physical injury itself but is because of the psychological sequelae that often accompany having a physical disability: the impact that it might have on somebody's psychological state, cognitive functioning, anxiety, depression, family changes, changes in the role of family members as a result of an injury and an inability to do what someone did before. It's often the psychological sequelae that need to be addressed before someone is able to be rehabilitated physically. So that's what we're talking about when we're talking about the psychological disability that might accompany an actual physical injury. The other is an issue, but I don't know that it's something that is—

Mr Mahoney: That's why I asked the question, so we can separate those two.

Mrs Witmer: We've certainly had similar presentations to your own, and I think most of us would be amenable to making some changes to the sections that you've requested and taking a look at replacing that with "health care practitioner."

I guess my question to you is, there's also been a request that a physician be included on the board of directors. Now, have you given any thought to that or discussed that at all? If that type of addition were made, again, would you want the general reference to "health care practitioner," or have you discussed that at all?

Dr Berman: Actually, this is again one of the things that came up in my discussions, and we subsequently had a meeting with Mr Mahoney because there was some reference to board composition in a report that he was involved in that reviewed the Workers' Compensation Board.

I think our preference would be to either have representatives from all of the relevant health professions on the board, which I think is impractical, or to create some kind of a mechanism where, rather than having representatives on the board, there can be representations to the board. I can see the advantage in having health care practitioners available to the board as resource people, because we're dealing with an area where that kind of expertise may be needed, but given the way in which injured workers are serviced, requiring a range of health care practitioners' involvement, I think that in addition to physicians there would be a lot of benefit to the board to

have as resource people the other health care groups.

Perhaps the way to go is to set up an advisory council or a professional advisory committee that could make representations to the board or could be accessible to the board. If there's a need for these people to actually have voting seats, let the professions on this group elect some representatives who could serve that function. But I think you would find there would be a large hue and cry from the other regulated professions if one or two professions were singled out when the others feel that they are playing important roles as well in that entire system.

Ms Murdock: Thank you very much. It's actually a really interesting way to end, because I agree with what you said about physicians and limiting it to physicians. So Mr Mahoney and I may even agree on an amendment here.

Mr Mahoney: Good. I'd better rethink my position.
1630

Ms Murdock: The problem with changing it all, in all of the act, is we're limited to changing "physician" as it's used within Bill 165. In terms of vocational rehab and return to work, that makes an awful lot of sense that you would use "health care provider" or "practitioner" rather than limiting it to physicians.

I don't know whether or not you even know about this, but this morning we had a written submission made to us by the Ontario Chiropractic Association. In one part of their submission they're talking about where drugless practitioners were once included, now that health care services has been changed, as you have stated, under the Regulated Health Professions Act they are now not included under the Workers' Compensation Act. Unless you're entitled as a doctor, you aren't included. I'm wondering if you know anything about that.

Under the legislation of the RHPA, the five professions were recognized as competent and authorized to (a) perform and communicate a diagnosis and (b) use the title "Doctor." These are: chiropractors, dentists, optometrists, physicians and psychologists.

Dr Nielson: It might have been that the act was repealed, the Drugless Practitioners Act, at the time of RHPA.

Ms Murdock: Yes.

Dr Nielson: So right now there's a void in terms of how that corresponds with the Workers' Compensation Act, which refers to the Drugless Practitioners Act. That's my guess.

Dr Berman: Without having the original act in front of me, my recollection is that the language under the definition of "health care" makes reference to practitioners regulated under the Drugless Practitioners Act. But that piece of legislation has been repealed with the proclamation of the Regulated Health Professions Act. So we kind of have a definition that isn't attached to any statute, and this is why we're making the recommendation that health care be defined as services provided by those regulated under the Regulated Health Professions Act. Psychology was never mentioned in that definition.

The Vice-Chair: On behalf of this committee, I'd like to thank the Ontario Psychological Association for their

presentation to the committee this afternoon.

Mrs Witmer: I would like it to be recorded on the record that although I asked on August 22 for copies of the discussion papers that were prepared by the transition team, they have still not been provided to us. I think that was done in an attempt that we wouldn't have access to that information and use it in our questioning. There was ample time.

Ms Murdock: On this table, I got two delivered to me.

Mr Mahoney: Well, that's the problem.

Mrs Witmer: Well, we didn't. I got all the material again yesterday—

Ms Murdock: But I got it from the clerk, and I'm presuming it came from the director of the department. Now I will personally—

Mr Mahoney: Elizabeth's copy was attached to yours. That's the problem.

Ms Murdock: Excuse me. I thought that was checked out, and that it would be checked out, because that was asked yesterday or the day before. Definitely we will send it to your offices, but I do take exception for Mrs Witmer to say that was intentionally done, because it certainly is not the intent to keep that information from anyone.

Mrs Witmer: Well, they were ready prior to August 22. Why they weren't provided was the question.

Ms Murdock: My understanding was that it was provided, as I stated on the record. If it hasn't been, and the clerk has not advised me such that it hasn't been—

Interjection: Check your mail, Elizabeth.

Mrs Witmer: I will again.

Ms Murdock: I will check.

The Vice-Chair: We're just waiting for clarification.

Mr Mahoney: I just wanted to say, in a spirit of cooperation, that these hearings have been difficult at times, entertaining at times, frustrating at times for all of us, and I think you, as the Chair, have done a commendable job of keeping things in order. Congratulations to you and the staff for getting us through this stuff.

The Vice-Chair: Thank you very much. Ms Murdock.

Ms Murdock: The clerk gave us exhibit 3/6/104, filed on August 31, 1994. The date of the letter from the Ontario Ministry of Labour is August 30, 1994, and it's signed by Mitchell Toker, manager of the workers' compensation unit. So that everybody's clear here, it says, "Standing Committee on Resources Development's Public Hearings on Bill 165—Ministry of Labour Undertakings Given on August 22, 1994," and then goes through a listing of all the undertakings made by the ministry at the request of different members of the committee.

Then there's a letter of August 26, 1994, addressed to Ms Manikel, explaining what was provided thus far. Then it has "WCB Reform: Governance and Leadership" and "The Role of the Board of Directors," decision-making on a bipartite basis, "Government Directions on Workers' Compensation Reform." Then it says, "New Directions for Return to Work and Vocational Rehabilitation." That is the transition team submission. So it is there, and you have had it.

Mrs Witmer: I have it now, thank you.

Ms Murdock: Well, it is not my fault. The clerk was given that to give to you. We all got it.

The Vice-Chair: This committee stands adjourned until Monday, September 26 at 2 pm.

The committee adjourned at 1636.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Président: Vacant

***Vice-Chair / Vice-Président:** Cooper, Mike (Kitchener-Wilmot ND)

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*Hope, Randy R. (Chatham-Kent ND) for Mr Ferguson

Conway, Sean G. (Renfrew North/-Nord L)

*Fawcett, Joan M. (Northumberland L)

*Ferguson, Will, (Kitchener NDP)

Huget, Bob (Sarnia ND)

Jordan, Leo (Lanark-Renfrew PC)

Klopp, Paul (Huron ND)

*Murdock, Sharon (Sudbury ND)

*Offer, Steven (Mississauga North/-Nord L)

Turnbull, David (York Mills PC)

Waters, Daniel (Muskoka-Georgian Bay ND)

*Wood, Len (Cochrane North/-Nord ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Arnott, Ted (Wellington PC) for Mr Turnbull

Duignan, Noel (Halton North/-Nord ND) for Mr Mr Waters

Hope, Randy R. (Chatham-Kent ND) for Mr Klopp

Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Conway

Phillips, Gerry (Scarborough-Agincourt L) for Mr Offer

Rizzo, Tony (Oakwood ND) for Mr Huget

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan

Also taking part / Autres participants et participantes:

Derek Fletcher (Guelph)

Clerk / Greffière: Manikel, Tannis

Staff / Personnel:

Fenson, Avrum, research officer, Legislative Research Service

Richmond, Jerry, research officer, Legislative Research Service

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**Legislative Assembly
of Ontario**

Third Session, 35th Parliament

**Assemblée législative
de l'Ontario**

Troisième session, 35^e législature

**Official Report
of Debates
(Hansard)**

Monday 26 September 1994

**Journal
des débats
(Hansard)**

Lundi 26 septembre 1994

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Workers' Compensation and
Occupational Health and Safety
Amendment Act, 1994**

**Loi de 1994 modifiant la Loi
sur les accidents du travail et la Loi
sur la santé et la sécurité au travail**

Vice-Chair: Mike Cooper
Clerk: Tannis Manikel

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Monday 26 September 1994

Lundi 26 septembre 1994

*The committee met at 1311 in committee room 1.*WORKERS' COMPENSATION
AND OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL
ET LA LOI SUR LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

The Vice-Chair (Mr Mike Cooper): Today, we'll be beginning our clause-by-clause on Bill 165. We'll be starting with section 1.

Mrs Elizabeth Witmer (Waterloo North): I would suggest at this time that we move to adjourn the committee.

Unfortunately, as recently as five minutes ago I received copies of the government amendments. I have certainly not had an opportunity to peruse the amendments or make the appropriate comments, so I would move for adjournment of the committee today.

Mr Steven W. Mahoney (Mississauga West): I think I just received the PC amendments as well, which is somewhat frustrating. So we've got new government amendments and new PC amendments coming in and it appears that the Liberal amendments were the only ones that were put in on time and distributed for an opportunity to look at them.

I'm a little frustrated at this, but I tend to agree that it's unfortunate that we're going to have to literally fly by the seat of our pants with such important issues. Even the first PC motion on section 1 appears to be quite extensive; it's almost a full page. I've just got that and haven't had an opportunity to even look at it. So I'm afraid I'm going to have to concur and second that motion.

Mr Randy R. Hope (Chatham-Kent): Just in all fairness, and I won't take any strikes at whether it was PC or Liberal motions we just obtained, but I think the times that the Liberal and Conservative and NDP amendments were brought forward and presented into people's hands made it difficult for a proper analysis. Mr Mahoney's saying he's just received some of the NDP and the Conservatives. I could get into that too but I won't.

Because it is an important piece of legislation that we have to deal with which is affecting a number of people,

whether they be current injured workers or future injured workers—hopefully not future injured workers—I think it's appropriate that we take the time to carefully do an analysis on the amendments that are being brought forward and to resume tomorrow with the constructive comments that will be made.

Mrs Witmer: I guess the other reason for the delay, and perhaps it's the reason why some of the amendments were not ready on the date that had been predetermined, is the fact that those of us who are on the committee did not receive any summary of the recommendations of Bill 165 that had been prepared by legislative research until September the—well, last Wednesday, I guess, whatever date that was. I know those were supposed to be ready for us on Monday and certainly that's what we were waiting for, in order to get those recommendations before we put our amendments together. So, unfortunately, the delay by that particular branch delayed the preparation of the amendments.

I think as a result we're all operating at a bit of a disadvantage now and I would concur with Mr Hope. We simply haven't had sufficient opportunity to analyse the information that's been presented to us.

Mr Steven Offer (Mississauga North): I have no problem in the motion as put forward and seconded by my colleague. I would like to make the point that when we resume I would hope that the ministry would comply with undertaking number 8 dealing with the legal ramifications of including a financial responsibility framework in the purpose clause as per your agreement. I care not whether it is today or tomorrow, as long as it happens.

Ms Sharon Murdock (Sudbury): Just on Mr Offer's point: It's legislative counsel to the committee that will answer your question rather than the Ministry of Labour.

The Vice-Chair: Further? Seeing nothing further, all those in favour of adjournment? Opposed? Carried.

Just for the committee's information, the amendments will be put in a binder for tomorrow by the clerk.

Mr Mahoney: Is this all of them?

The Vice-Chair: The package that you have just received is all the amendments that the clerk has received to this moment.

Interjection.

The Vice-Chair: My apologies. They'll be put in a binder just for myself, so it's easier for me.

Mr Mahoney: What time are we going to start tomorrow?

Ms Murdock: I know that we were supposed to start

tomorrow at 11, as per our sheet that was handed out by the clerk. However, given that we would only sit for an hour and then adjourn for lunch and then come back, I'm suggesting that perhaps, if the other parties agree, we would come back at 1 and not sit in the morning at all.

The Vice-Chair: Thank you, Ms Murdock. I've already checked with all three parties and they have agreed to that. Seeing nothing further, this committee stands adjourned until 1 pm tomorrow afternoon.

The committee adjourned at 1316.

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Hope, Randy R. (Chatham-Kent ND) for Mr Waters

Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Conway

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Turnbull

Clerk / Greffière: Manikel, Tannis

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Third Session, 35th Parliament

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Troisième session, 35^e législature

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Tuesday 27 September 1994

Mardi 27 septembre 1994

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The Vice-Chair (Mr Mike Cooper): We will be continuing our clause-by-clause on Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act.

For the information of the committee members, the clerk will be handing out two replacement motions. They'll be R and whatever the number is and the number will replace the number in your book or your package. So each of your pages are numbered so they'll replace the ones that are numbered that in your book.

Mrs Witmer, I believe you're first.

Mrs Elizabeth Witmer (Waterloo North): I would like to move, as we begin the proceedings to amend the Workers' Compensation Act and the Occupational Health and Safety Act, Bill 165, a resolution which I believe has been distributed. The resolution will be coming; it's on its way.

The resolution states, and I quote:

"Recognizing that many groups which appeared before the standing committee on resources development during the public hearings on Bill 165 indicated that Bill 165 is seriously flawed because it does not reflect the accord reached between the business and labour representatives of the Premier's Labour-Management Advisory Committee; and

"Recognizing that many of those appearing before this committee expressed concern that Bill 165 will compromise the work of the proposed royal commission on the WCB; and

"Since instead of addressing the WCB's unfunded liability crisis, Bill 165 will increase the unfunded liability to \$15 billion by the year 2014; and

"Given that Bill 165 will impose significant new administrative burdens on employers which will diminish the competitive position of Ontario businesses;

"Therefore, the standing committee on resources devel-

opment resolves that the Minister of Labour be requested to withdraw Bill 165."

I move that resolution.

As I have indicated, there were certainly numerous groups that did appear before the committee during the hearings indicating their dissatisfaction with Bill 165 and also the fact that it was seriously flawed. Probably the most serious flaw is the fact that it did not reflect the accord that had been reached between business and labour during the course of the discussions that took place.

I'd just like to go back to the beginning of those discussions. In the spring of 1993, the Premier did request that business and labour sit down together to review the problems of the workers' compensation system. He asked them to come up with some proposals for a reformed WCB system which would pay workers fairly and, at the same time, meet the test of being financially sound.

Although business and labour each had their own agenda—for example, business was concerned about rationalizing and containing costs and labour wanted to increase and expand coverage and benefits without regard to cost—in the end, as a result of the pressure that was exerted by the Premier, an accord was reached between the two sides on March 1994.

Although not everyone endorsed all the aspects of the accord, there was agreement on most of the fundamental elements and there certainly was an expectation that the government would honour the accord that had been reached between business and labour.

However, the government did not honour the accord and instead introduced Bill 165 which altered dramatically the agreement that had been reached in order to satisfy its own agenda. In other words, the government interpreted the agreement to satisfy its own agenda.

It was at this point in time that we need to recall that the business community decided to withdraw its support. Its support evaporated as the government produced these new reforms contained in Bill 165 which were obviously very slanted in favour of the labour position.

This bill and this change in direction destroyed the initial confidence that the business community had had that the government was going to be fair and also it destroyed any expectations that it had for a successful reform of the WCB system.

In fact, they said that in their presentation to us on August 23, and I quote, "Bill 165 is a clear breach of faith against the very group from which the Premier

sought advice," and that of course is from the business committee of the PLMAC.

So unfortunately, we have before us today a bill which totally fails to address the very, very serious problems facing the WCB. It does not achieve the objectives that the Premier himself set to reform the system and that was that it respond to the needs of the injured workers, that they be paid fairly and that it would also meet the test of being financially sound.

1320

It doesn't have any reference at all to financial responsibility or accountability—that's totally lacking—and it's for that reason that I would be recommending today that this bill be totally rejected and a true process of reform be undertaken which will restore the confidence of all of the stakeholders in this province, a confidence which I have told you has been very badly shaken.

It is time for everyone in this province to work together cooperatively and in a spirit of true consultation and to articulate a very comprehensive set of principles. We need to go back to the original document, the reasons why we have the WCB and what it was supposed to accomplish. We also need to articulate a very clear vision and a long-term plan for the reform of the system, and that's why I've also said that this bill is going to impact on the work of the proposed royal commission on the WCB.

Really, we're putting the cart before the horse because the royal commission that the Premier is considering setting up is going to be reviewing a moving target and it's going to be changing daily as a result of the work of the transition team and, of course, that work is already ongoing and also because of the implementation, if this bill is indeed enacted. Therefore, this bill is totally going to complicate that entire process of the royal commission.

So I would suggest that if this bill, at this time, is dumped on the WCB, there are going to be more problems than we presently have. We know that this body has extreme difficulty administering the act the way it is, and here we're going to give that body, without looking at any long-term plan for total reform, a very new and ill-timed challenge to deal with.

It will be a challenge because this bill is going to introduce tremendous new costs into the system; it's going to require that the internal human resources be reallocated because of new obligations and newer responsibilities. As a result, there will be no benefit to the injured worker or the employer because what we're going to see is reduced ability to deliver the services effectively, services which at the present time are not being delivered in the efficient and timely manner in which they should be.

So it's for all of those reasons, but primarily because this does not reflect the accord, the agreement that was reached between business and labour, that I ask my colleagues to support the resolution to withdraw the bill and to come together in a spirit of cooperation, recognizing that the workplace has changed. We need to ensure that there is true consultation, dialogue between labour and management, and I ask you to support this resolution to withdraw the bill.

Ms Sharon Murdock (Sudbury): I'm glad to hear that Mrs Witmer says that we have to go back to why the WCB is in place because if we do that and we go back to 1914—the whole concept was that workers who are injured on the job would be able to be assured of some income replacement while they were off work getting rehabilitated, and that in exchange for that guarantee, they would then not sue their employer. The employer would then pay for that benefit package and workers would then know that, should they be injured on the job, they'd have some kind of protection. The act was put in place for the benefit of both parties, I would contend, but predominantly for the people who work in the province of Ontario.

Now, when we look at the bill that is before us arising from the PLMAC reform that was negotiated between labour and management, I would contend, contrary to Mrs Witmer, that if you look at the actual framework agreement that they came out with, and I've got the management submission that they put out, the bipartite board of directors was an agreed-upon structure, and Bill 165 covers that. There are no changes to how the PLMAC worked that out in the sections under Bill 165.

Part II was the advisory committee that would be established with membership from all organizations. That does not have to be done legislatively, and therefore, although it's not addressed in Bill 165, it is being addressed, as we speak, to a number of issues under the interim transition team.

Part III, financial responsibility framework: I think this is probably the key issue that has been presented to us time and again through the three weeks of presentations we had. The employers feel that the financial responsibility framework is the key to the whole of the Workers' Compensation Board, and I disagree. It is certainly a major part, but it is not the only thing that exists at the board, nor is it the only reason that the board is in place.

I'm going to read this because I think it's really important: "Business and labour have agreed that there be a financially responsible framework for decision-making and operation of the system. The underlying premise of the FRF"—financial responsibility framework; I won't say it each time—"and the governance process puts ultimate accountability for the system on the government.

"The act shall contain a purpose clause," and it proceeds to go through that.

Our amendment will cover that, as you will see in the amendments put forward, the one area that wasn't in the purpose clause and in exactly the language that is there.

The indexing is part IV and it was agreed that the Friedland formula of 75% of the consumer price index less 1% with a cap of 4% per annum would be applied to all past and future benefits. There was agreement that some recipients of WCB benefits need special consideration, and they were identified as survivor and dependent groups, 100% pensions and 100% FELs, and unemployed workers with disabilities injured prior to 1990 as defined by subsection 147(4) of the act.

And then the area that they didn't agree on. It says: "The nature of how this special consideration might be given was not agreed to. However, both parties did agree

that the government must make a determination of how these people will be treated." That's exactly what the government did and it's reflected in Bill 165 with the \$200.

Then part V, return to work: "There was agreement that the number of workers returning into the workplace must be improved." Both parties said that. "Using the analogy of a four-legged stool, where each leg represents an essential component, there was consensus as follows:

"The structure of the current act imposes an obligation on employers to re-employ workers. During discussions, a review of section 54 was conducted and the mandated obligation on employers to return employees to work was noted. The labour community is of the view that the WCB is unable to enforce section 54 of the act without an application from a worker requesting the WCB to do so. The business community's opinion is that the act allows the WCB to enforce employers' obligations to re-employ workers. If the WCB is not enforcing the act, it should do so."

Another area of disagreement is, "If the language of the act fails to provide the WCB with the authority to enforce employers' return-to-work obligations, then the act should be amended to give the WCB this authority," and Bill 165 does that.

Existing NEER should be augmented "by an additional incentive component to encourage greater re-employment. The parties agreed to the development of a template of best practices. This template of best practices would be used to adjust (up or down) the base refund or surcharge as calculated under the existing NEER program." In section 103.1 it is in Bill 165, and they took the language directly from the template of best practices in terms of our amendment that we're presenting before this committee.

1330

Then it goes on to part VI on coverage. No agreement was reached and the government was to make a decision. We made the decision and put it on to the royal commission.

Then on part VII, pre-1990 pensions: "It was agreed that unemployed workers with disabilities who were injured prior to 1990 and who are in receipt of a WCB pension may require some special treatment with respect to their pension," and the increase of \$200 a month. There was disagreement there.

Then lastly, part VIII, the royal commission is going to be looking at it.

The contention by Mrs Witmer that this is putting extraordinary pressure on the royal commission, in my view, doesn't hold water, because the reality is, the royal commission has not started yet. By the time it does get started, my understanding is that it's going to take approximately 18 months for it to do its review. You figure that's a year and a half. By the time they sit down and make recommendations and present those recommendations to the government, I'm saying it'll probably be two years from now.

By the time the government takes action and institutes legislation—as we can see just from this bill or from any

other bills that we have put through, particularly from the Ministry of Labour; they seem to take extraordinarily long—it's going to be at least three years before any kind of recommendations from the royal commission are implemented. The reality is that with the changing workplace, as Mrs Witmer has noted, return to work is key. Everyone agreed, even the employers. Everyone agreed that return to work is absolutely key and that if you can modify the workplace or if you can change the return-to-work attitudes, then that should be done, and this bill will do it.

So I definitely will not be agreeing with this resolution and I recommend that my colleagues vote against it.

Mr Paul Klopp (Huron): Steve agrees with you.

Mr Steven Offer (Mississauga North): I wasn't going to take part in this debate on this motion—

Mr Klopp: But that was then.

Mr Offer: But that was then. I think it's an important resolution. I think anything that deals with a withdrawal of a bill at any particular point in time is quite important. I know our party called for the withdrawal of the bill yesterday and it was done after some very serious consideration, because we recognize that a lot of people took a lot of their time to come before this committee and express their concerns on various aspects of the legislation.

I thought that in a strange way, after just thinking about what happened over that three-week period, in many cases management and injured workers were quite unified in their opposition to the bill. Now, they might have had some differing reasons, but I think the position they came to this committee with was quite clear: They were very concerned with the bill itself; they were quite concerned with the implications of the bill. In a strange way this bill was quite a unifying experience for both management and the injured worker as they stood almost as one opposed to the legislation, but granted, for different reasons.

I am sure that members of the government side will take the opportunity as we debate this resolution to—

Interjection.

Mr Offer: —share their thoughts on the united opposition that management and injured workers had as opposed to interjecting at a most inappropriate time.

However, the interesting point as to why I am in support of this resolution in the withdrawal of the bill is, firstly, as I have indicated, that my party and Mr Mahoney, the Labour critic, had called for the withdrawal yesterday, and it was done after, as I have indicated, some very long and hard deliberation.

The bill has 34 substantive sections. I think, at a very quick reading, 29 of those have been changed. I think that we're dealing with a very strange situation when the government has changed a particular piece of legislation in such a way that you have, in essence, not withdrawn a bill but you have rewritten a bill the impact of which is not known by anyone, and there has not been one iota of public hearing on the basis of the amendments that you have put forward. I think that will come up later on.

I listened to the parliamentary assistant as she spoke at

some length about one of the items brought forward—I think almost every day—and that was the issue of the financial responsibility. I think the parliamentary assistant rightly points out that for many people it was a crucial item in the bill. It wasn't the bill in its totality, but for many people who recognized that, it was still an essential item in the legislation.

The parliamentary assistant will know that there was a PLMAC-WCB reform framework of March 5, 1994, and the parliamentary assistant and members of the government will know that part of that agreement indicated that business and labour have agreed that there be a financially responsible framework for decision-making and operation of the system. The underlying premise of the FRF and the governance process puts ultimate accountability for the system on government. I want to restate one part of that agreement. "Business and labour have agreed that there be a financially responsible framework for decision-making and operation of the system."

When we move from that agreement to a letter of April 21 from the Premier of Ontario to Mr Jim Yarrow, chairman, Employers' Council on Workers' Compensation, part of that letter reads, "A 'purpose clause' will be added to the Workers' Compensation Act which will ensure that the WCB provides its services in a context of financial responsibility." I'm reading, of course, right from the letter.

We have a framework agreement which speaks to the financial responsibility for decision-making in the operation of the system; we have the letter from the Premier which talks about financial responsibility in the issue of services to the system; and the government—and this will come up later, I am sure—in its amendment speaks only to the operation of the board.

I believe that the amendment that has been put forward by the government in no way, shape or form addresses the substantive aspects of the agreement that was reached by the PLMAC of March 5, 1994, nor in any way, shape or form does it address the issue that the Premier of the province, Bob Rae, stated in his letter of April 21 to Mr Jim Yarrow. I have a suspicion that we might, if this resolution fails—and I hope that it doesn't—have occasion to further discuss that.

I am speaking in favour of the passage of the resolution. I am speaking in favour of its passage because of the amendments that the government seeks to introduce in this clause-by-clause stage, and comparing those amendments to in fact the amount of sections of a substantive nature that exist in the bill. The government has rewritten the legislation when in fact it should be withdrawing it and taking whatever step of a nature it feels is appropriate.

1340

I am also in favour of the resolution because so much of the debate focused on the health and the future of the Workers' Compensation Board and so much of that funnelled down to: Will decisions be made in a manner that is financially responsible so that the system can not only survive but indeed can evolve, so that the needs of the people who fund it are indeed met, and indeed that the needs of the people who happen to be injured workers are

addressed? It was clear that unless you could embrace that principle of financial responsibility in the operation of the WCB in terms of the decisions that emanate from it, the result will without question be a weakening of the system which will result in the fact of increasing suspicion by those who fund it and increasing inefficiencies for those who need it.

So it would seem to me, on the basis of the needs of injured workers in this province and on the basis of the concerns of the funders of this province, that the most and only responsible course to take is to withdraw the bill, to relook that which has been said, to re-examine the issues that have been brought forward, and to take actions as a result of such an examination. To move forward with a bill that is nothing less than a quilt of different colours, of different messages, of different meanings, of incredible concerns, we end up with a blanket that shields and covers no one but rather hides some real problems, and we can't allow that to take place.

I would hope that members of the government would recognize that a resolution of this kind, and of the kind called for by my colleague Mr Mahoney yesterday, are ones which in essence will strengthen the board, will strengthen the system because it will deter changes to the system that will weaken it. I think for the injured workers of this province and the business groups in this province, we have no less responsibility than to act in a fashion that is directed in their best interests. Proceeding with this bill flies in the face of the message that we received through three weeks of public hearings.

Mr Ted Arnott (Wellington): I was just going to start by asking Mr Hope what the score of the hockey game was last night if he—just kidding.

Mr Randy R. Hope (Chatham-Kent): If there was substance to be listened to, I would listen, but there's no substance to be listened to.

Mr Arnott: All right. I'd just like to start off by saying that I want to support my colleague's resolution. I think it's a sound resolution. I think it makes a lot of sense. I think it's accurate in its assessment of the events that have transpired leading us to this point, and I do agree that this bill ought to be withdrawn, for a number of specific reasons.

Last night I spoke to the Palmerston chamber of commerce in Wellington county and we talked about the Workers' Compensation Board.

Interjections.

Mr Arnott: Well, they're creating a lot of jobs in Palmerston. I have a great deal of respect for what they're doing. I think that they have a lot of good suggestions to do with workers' compensation. They were concerned about the unfunded liability issue. They were concerned about the administration practices at the board and I think there are no aspects of the bill that reflect those concerns that are evident in my riding in Wellington county.

I think it's a very practical resolution in that it suggests that the royal commission on workers' compensation ought to be free to look at the whole range of issues and that none of these issues should be pre-decided in

advance of the royal commission. Certainly our caucus has, for years, been calling for a royal commission on workers' compensation. As late as the 1980s when we were in opposition and the Liberals were in power, we called for it. I'm not 100% certain of this, but I believe Bob Rae, when he was leader of the Opposition in those days, in the late 1980s, called for a royal commission as well, and it's too bad that we're four years in the mandate before the government finally concludes that it's necessary to have a royal commission.

So here we are. It's been I think since June it is, or May, that the Premier announced that we're going to have this royal commission, but the commissioner hasn't even been appointed and we're told that it's not going to happen in the short term.

I don't think we should prejudice the results of that royal commission. I think that if this bill goes through, it will do just that.

We've heard that no one supports this bill, or very few presentations that have come forward have been in support of this piece of legislation. I think some have given some modest support for specific aspects of it, some of the presentations, but as a whole we haven't really heard a great deal of unanimous support for the bill from either labour or business. When you're in a situation like the Workers' Compensation Board is presently, where both sides are so polarized and there's such a wide gulf between the two positions, when a government tries to take a sort of a middle-road approach it becomes very difficult and occasionally you don't get too much really positive support for something when you're just trying to find a way up the middle that will endeavour to find a public interest instead of just siding with one side or the other.

But it's interesting to note, and I think it's a strange irony, too, that the Premier constantly talks about bipartisanship and that this is the answer to encouraging cooperation in the workplace, by the bipartite process, and that is, you set up a structure where labour's got power on a committee and management has equal power and you put them in a room together, and if you leave them in there long enough they'll get to know each other, they'll get to understand each other's opinions and they'll come out with an agreement. That's the whole concept behind bipartisanship, and the Premier tells us it's a good idea.

Mr Len Wood (Cochrane North): What does Mike the knife say?

Mr Arnott: I have reservations about it, but the interesting thing—

Interjections.

Mr Offer: On a point of order, Mr Chair: I really want to try to listen to all of the comments that are being made, in this case by Mr Arnott, and I would hope that you might try to stop the cacophony across the way by the government members.

The Chair: Thank you, Mr Offer. I will. They are on the list and they will have their opportunities. Mr Arnott.

Mr Arnott: Just getting back to the concept of bipartisanship, it's interesting to note and I think it's ironic

that in this case, the Premier's Labour-Management Advisory Committee on Workers' Compensation, in spite of a lot of belief that it wouldn't work, actually came up with an agreement. They sat down and they came up with a complete package that was interconnected, specific aspects of it, through the bargaining process where management said, "Well, we can accept this much if you give us this, labour," and then labour saying, "Well, we can give you that if you give us this," and there was a balanced agreement, not unlike a collective bargaining agreement where a union will sit down with management and come up with an agreement that has specific suggestions for change in the compensation or the benefits of employees and coming up with an agreement that people can sign on to and agree with.

And of course in this case, bipartisanship having worked in the first instance, the Premier didn't accept it. Because the labour unions started to unravel in terms of their acceptance, he decided to cherry-pick specific aspects of the agreement. The agreement that the committee came to is not entirely reflected in this bill, and for those reasons I think that this resolution ought to pass and I would encourage all members to support it.

Mr Will Ferguson (Kitchener): I certainly want to commend both the opposition parties for doing just an excellent job in fulfilling their duties and responsibilities and, more particularly, their role in opposing every single initiative, every suggestion, every idea that this government puts forth.

I would suspect that if this government had not proceeded with this bill and instead proceeded with the royal commission, we would be hearing today that the government ought to proceed with a bill because there'd be certain things that this government can do to resolve part of the difficulties that the board is facing immediately, rather than wait for the long-term effects of the royal commission.

They're in much the same position as editorial writers, who can have it both ways, and I think the government would be facing that criticism today. The critics would be saying: "Well, you know, there are certain things you can do. Geez, you don't have to wait for a royal commission. Why don't you do this, this, this, this right away?"

They've got to get 10 out of 10 for fulfilling their responsibilities, and I think all of us on this side wish them as much success as possible in the future in continuing to fulfil those duties.

1350

I think it's instructive when we look at who appeared before this committee and what they had to say, and I think it's instructive when we look at what the business community had to say, the organization. Let's face it; they have their own agenda here, and it's just not a financial agenda, I might add. They opposed it 100% down the line, everybody diabolically opposed. In fact, I am sure that if we asked every one of the business community presenters what they liked about the bill you would be hard pressed today to find one thing that they would want to give credit on.

I think it's interesting when we listen to the labour

community, and they appeared before the committee and they said for the most part they didn't like some of the conditions of the bill but they could live with it. The labour community did not appear before this committee and say: "Oh, yeah, we support the bill 100% down the line. In fact, we think this bill is the greatest thing since popcorn." They didn't say that at all. And of course the labour community, let's admit, they've got an agenda here as well: to look after their members.

If you put those two communities aside and you look at the individuals who appeared before this committee, when you look at what the individuals had to say, their comments were the most important that any member of this committee really ought to take a hard look at, because individuals who appeared before this committee, either injured workers or people who live with or work on behalf of injured workers, don't have a hidden agenda.

They're not appearing before this committee with one eye on the next provincial election. The individuals who appeared before this committee for the most part were individuals who got caught up in the system and are still in the system for the most part, and they're the one who experience first hand on a daily basis the rigours of what it's like to go through the Workers' Compensation Board gauntlet. Those individuals could find some things they like about the bill and some things they don't particularly care for in the bill.

So when you take the vested groups and the organized groups and put them aside and you look at what the individuals have to say, I can't help but come to the conclusion that what we have here is a package that doesn't particularly suit any one group but serves every group, that ensures that no one is totally happy. I think particularly as elected people we have to recognize that we're not here to ensure that everybody is standing around in a circle holding hands, saying, "Oh yes, we all agree and we all think this bill is going to do everything that we ever dreamed of."

I still cannot get over the hurdle of why some people think if you have a \$17-billion unfunded liability or a \$20-billion or a \$30-billion unfunded liability why you should have \$30 billion in the bank to cover that, when the unfunded liability is over x amount of years. That to me makes no sense. I don't know anybody in my community who goes out and purchases a \$200,000 home only when they have \$200,000 in the bank. I don't know anybody who's done that in the past in my community. Yes, I'm sure the Liberals or the Tories would be able to drag up that one example of somebody who's been able to do that, but by and large that's not the way business is conducted.

I don't know of any business out there that doesn't have an unfunded liability when it comes to their pension plan. I've heard time and time again the business community hammer this government, saying, "Oh, the unfunded liability is too high." Well, you know, they're operating on a principle of an unfunded liability when it comes to their pension plans, and they're suggesting, "This is what we do, but my goodness, we don't want the government of Ontario to do this because financially it's not a sound practice."

I guess what I'm saying in conclusion is that the individual residents of this province who took time to appear before this committee, gave this government and this committee some sound advice, and I think it's that advice that we should be paying the most attention to as we proceed through these amendments.

Mr Hope: Just to echo some of the concerns because once again this resolution, all it does is prolong a problem that currently exists. What we've seen today, through the bill that was introduced by the minister, is a government that's willing to at least attempt to resolve some of the problems—not all the problems; some of the problems—that have been there for years that others have ignored.

Once again, this resolution tries to ignore a situation, throw it off to somebody else without taking political accountability for actions. They're so concerned about this bill that they're asking it to be put off to the side so they can use it as an issue, and Mr Ferguson clearly indicated one of the things that I firmly believe, that if there was a new piece of legislation brought forward today and we just announced a royal commission, they would be up on the left foot doing everything saying, "Take action now", but today they're up on the right foot because what they're saying is the legislation is flawed and we should just go to the royal commission.

It's amazing that I hear the opposition talk about flawed pieces of legislation. If I reflect on my past history before coming to this place, you want to talk about flawed pieces of legislation. Bill 162, what were the principles that were derived from that one? What was it supposed to accomplish? If we look today, most of the problems that exist in the people whom I represent are areas of problems that were created by Bill 162 brought forward by Mr Mahoney and Mr Offer's government, who would have no part in listening to what was being brought forward from people in general.

The Conservatives bring forward the unfunded liability. Who was it that did not raise employers' contributational fees to the Workers' Compensation to try to maintain competitiveness as they did, and then helped beef up the unfunded liability? It's nice to suck and blow at the same time but today we have a problem that we have to deal with, and that's one of the things that this legislation brings forward.

I heard business community after business community come before this committee and talk about unfunded liability. Unfunded liability is a common practice of business. When they were told by the Liberals to reduce their unfunded liability or to start making payments, reducing it from 10 years down to five years, the business community went absolutely bonkers saying, "No, no, we need that expanded unfunded liability over a longer period of time to deal with it." They're the same ones that are coming here and asking us to deal with this unfunded liability.

I just had the owners walk away from a plant for their own reasons, and they left a huge unfunded liability; an unfunded liability to this province, to the federal government, the municipal government and also the pension program, but they're part of the group that came before

this committee and said, "You got to deal with the unfunded liability."

It's also important that when we talk about this piece of legislation, who is actually responsible for the funding of the Workers' Compensation system of this province? It's the employers' responsibility, and we keep losing sight. If they're saying, "Let's deal with the unfunded liability aspect," fine, then let's put the fees appropriate. Let's make up for the incompetency put forward by the Davis government at that time about not making sure fees were reflective of the cost.

The administration changes that are made within this bill, the amendments that are being brought forward, are not picture perfect, but to a lot of people they're a major improvement and a step in the right direction, which I'm sure the royal commission will deal with, and I'm sure that during that royal commission presentation we're going to be hearing from the same people who are talking about the unfunded liability. Don't bring in all those other employers out there, either. Leave the banks and leave everybody else who is currently not covered, leave them out there and say, "No, no. We're not going to cover them. We don't need the money," and I think the presentations we've seen before this committee clearly indicate there's a vast majority of workplaces out there that need to be brought under this system in order to address injured workers and their changing workplaces in our society.

1400

So Mr Ferguson was absolutely right. The opposition is doing a fantastic job at opposing everything. That's great. We've heard their ideas that what ought to be addressed in the workers' compensation system is to slash and burn the injured worker drastically by the Conservative government. Mr Mahoney, we're still waiting for him to pull that DeLorean out which is Back to the Future or whatever it is. I'm still waiting for Liberal policies. I thought maybe after their retreat we'd start to hear some policies or directions or ideas they may have. But the Liberals did have an opportunity during Bill 162 to correct problems but never did.

All I can say is that this resolution is exactly what it's intended to do: to prolong the system; to keep the victims out there, the people who are looking forward to the improved monthly pensions that they will get; the ability to improve the management ability.

One of the things that I sit here and look at this resolution is, I doubt if we'll ever get through clause-by-clause this week with this type of resolution. I can just imagine the debating that will go on, the hours of talk, the hours of rhetoric that we'll listen to, about the amendments that are being put forward.

But I believe that the competitiveness issue is one that was brought on by a Conservative government, called the dog-eat-dog society, called free trade and NAFTA. We have to compete in that marketplace, but if we're asking the workers—and I know the workers in my community have been meeting that competitive edge by putting out extra product and making sure our employers are receiving a good profit. All they're asking for is when they've been asked to compete in this global marketplace and

they're getting injured in their workplaces, they're asking for fair compensation for that injury that occurred in a workplace.

This resolution does nothing but just prolong a system and it does not allow us to get down to the work that government is supposed to be doing, and that is to deal with the amendments that are being put forward before this committee and to bring the legislation back into the House, pass the legislation, fix some of the problems that were out there and move forward to a royal commission to deal, hopefully, maybe even with a universal disability system for this province.

All I can say is I will not be supporting this resolution, and by the time we're done listening to the speeches, maybe we can get one of the amendments done out of this total package hopefully by the completion of the hour today.

Mr Offer: I just want to make three short points. Mr Ferguson spoke about in his opinion there were people who came before the committee who represented management and had their own agenda and there were people who came from labour and had their own agenda, and said there was another group of people that came, individuals, injured workers, who came telling us their position on the bill.

I think, without putting words in Mr Ferguson's mouth, he's saying that what we should be doing is really taking some real strong recognition of that group that came here. I must say I agree with that and I think that if we take a look at those who came before us, they were quite opposed to the bill; they were quite opposed to the piece of legislation.

I think that just on the basis of that, the government members should support the resolution, maybe for a different reason, but certainly I believe that the injured workers of this province who came before this committee, and I think were quite representative of injured workers throughout, were quite concerned on, if not outright opposed to, aspects of the legislation. It is our responsibility to deal with the point they brought forward to this committee, and that was oppose the bill. Here we have a wonderful opportunity to withdraw the bill. I believe injured workers in this province would in no small measure be in favour of withdrawing a piece of legislation they shared with us as being quite harmful to them.

The second point I want to make deals with the unfunded liability. This was an interesting area of discussion. Some said it was like a debt, sort of like a mortgage, sort of like a liability that we all know of. Others said it isn't like that, and we have to address the fact that maybe unfunded liability is not like a debt.

It's quite interesting now to hear members of the government refer to it as a debt in a more traditional sense, such as a mortgage and things of this nature. Examples have been brought forward: Does anybody buy a \$200,000 home without incurring a debt known as a mortgage? I think there are a lot of people who would realize that those who are fortunate enough to purchase a home do incur a debt known as a mortgage for a particular percentage of the equity of the value of the home.

I think, if we're going to follow that argument, we'd better be pretty understanding about the message that's been brought forward, and that is that there is a real concern that when the home is \$100,000 and the debt on the home is \$100,000 or \$150,000, you'd better be really concerned about that. If the government is going to start to deal with the unfunded liability in a traditional debt scenario, then, listen, I think that a lot of people will very much understand that. I think it underscores the need to withdraw the particular piece of legislation if that be the way in which they're going to deal with a significant issue around this bill.

The third thing is not really germane to the issue but must be stated. I don't know if many minutes passed before members of the government said: "Those dastardly Liberals. Bill 162, deeming. How could they do that?" The interesting point to be made is that you have now hung on to power for over four years and you've done nothing about the issue that you are so politically stated opposed to. If one can throw the criticism to one party, then one must be up front and be able to take the criticism that you just haven't done one thing on the issue that you are so upward-statedly opposed to, and you're just going to have to live with that.

I know that's not necessarily germane to the issue—

Mr Hope: You're right, I can; I can live with that.

The Acting Chair (Mr Paul Klopp): Order.

Mr Offer: I sort of feel like I'm prodding the beast.

The Acting Chair: Yes, quit teasing the bears.

Mr Offer: I knew, Mr Chair, that it wasn't necessarily germane to the issue, but one can't just sit back and listen to someone basically saying, as the government says, "How dare you—we haven't taken action." And that's what you're saying.

Ms Murdock: I'll be fairly brief here. I can't help but comment on the crazy patch quilt that Mr Offer offered as an analogy.

Mr Offer: I didn't say "crazy."

Ms Murdock: You didn't say crazy patch quilt, but you said made up of different and divergent kinds of pieces and so on and it reminded me of a crazy patch quilt that my grandmother used to make, and you're saying using it as a blanket to hide under. I think that you should be reminded that those old crazy patch quilts, Mr Offer, were very beneficial, extremely warm and are still made to this day. Albeit this crazy patch quilt of Bill 162, as you're calling it, is, as Mr Arnott has said, not to the liking of everyone, it nevertheless is addressing some of the major problems such as return to work and others within the bill and I think those are very important. So, as I stated earlier, we will not be supporting Mrs Witmer's resolution.

1410

Mrs Witmer: I appreciate the discussion and debate that's gone on, particularly the references to the quilt that have been so effectively used by two of our speakers, but I wanted to respond to some of the concerns and arguments that had been made about the need to be unconcerned, I guess, about the high figure that has been reached as far as the unfunded liability is concerned as

we know it's presently around \$11.7 billion. I want to remind the government that one of the reasons that the Premier did introduce the reforms was because he also was concerned about the increase in the unfunded liability and he did see the need to make sure that it wasn't going to increase to \$30 billion or beyond.

I also want to remind those who have spoken to the issue of the unfunded liability, who have indicated that the employer community did not assume the appropriate responsibility and pay adequate fees, that in 1984 there was a recognition that the annual assessments that were charged to the employers were inadequate to cover the future accident costs and as a result the board did adopt at that time a full-funding strategy to ensure at some future date that its assets would match its liabilities.

That funding strategy, that's in 1984, was to raise assessment rates to levels adequate to cover the current and future costs of each year's new accidents and it was also to generate a surplus above this amount that was going to be sufficient to retire the unfunded liability within 30 years, which of course is that magic 2014 number. That full-funding strategy has governed the setting of the rates every year since 1985 with the exception of the 1991 rate freeze.

I just want to remind you that employers did pay rate increases of 15% for three years, and that is quite significant. This was followed by increases of 10% for the next three years. So to say that employers have never paid the high premium rates that were necessary, I believe, is totally unfair. The reason the system got off track is because in 1990 the unfunded liability increased more than was anticipated under the original funding strategy for two reasons. Number one was Bill 162 which we've indicated was introduced by the Liberals in 1989, and that added nearly \$1 billion to the board's unfunded liability, and at that time as well the recession reduced revenues.

So I want to make it absolutely clear that the employer community has attempted to pay their fair share and I will also just let you know what the result of high premium hikes are. I have dated here September 27, 1994, an article entitled "Premium Hikes Hurt Business," Toronto Sun. Here we have a Mississauga-based mom-and-pop operation on the verge of bankruptcy. Why? Because the Workers' Compensation Board hiked their premiums by more than 400% in two years. In 1993 these people were paying \$1,076 in premiums for two employees. By November 1993 they were paying \$4,120, an increase of 383%. In 1994 their premiums hit \$5,385. As the husband says, "They are killing me." He says, "The worst part about it is I've never been able to get a live person to talk with at the WCB...all I get is voice mail and nobody returns my calls."

While this man waits, the premium hikes are retroactive, the WCB is looking for interest, and they've been asked to pay \$2,000 in interest. That is the impact, folks, of high premium rates on the employer community. You force the individuals out of business; you destroy jobs that are available for people in this province. So for you to suggest that 15% and 10% rate increases aren't high enough, I think, is most unfair. The employer community

has certainly attempted to pay its fair share of the assessment rates.

I also want to just go back again to the unfunded liability. Regardless of what you and I know about economics, and I suspect some of us know less than others, there is reason for concern. It's not a fictitious figure, the \$11.7 billion. I want to tell you that some day we do have to pay this out. The system was never designed to defer the mortgage funding of the system on to future generations of employers and people at large.

If you're not concerned about the adverse effect of the unfunded liability, I can assure you it is having a negative impact on Ontario's credit rating. It does act as a growing disincentive to the new firms and businesses that may be considering locating in this province. The Dominion Bond Rating Service has spoken to this issue. We've also had the Canadian Tax Foundation speak to this issue. Certainly there is concern, and because of the concern, it could impact very negatively on future job creation in this province.

I think it's important to note, and I'll just conclude by saying, the government did not adopt the consensus approach and adopt the solution that had been proposed. As a result, I am opposed to the bill that we have before us, because it doesn't address any of the critical problems that are facing us today. We don't have an adequate purpose clause. We don't have within this bill an effective governance structure. We have no financial responsibility framework. That is what was necessary. We needed to fully fund the cost of new claims, we needed to balance the outputs with the inputs, we needed to liquidate the unfunded liability and we needed to maintain a system that is competitive.

That is not part of Bill 165, so this bill is no solution to the many problems that are facing us. I would urge you very strongly to support the resolution and not pass a bill which is only going to exacerbate the problems at the WCB.

The Vice-Chair: Further discussion? Seeing no further discussion, on Mrs Witmer's—

Mr Hope: Mr Chair, may we have 20 minutes to call our members in before we have a vote?

The Vice-Chair: Okay. The committee stands recessed for 20 minutes.

The committee recessed from 1418 to 1438.

The Vice-Chair: On the resolution by Mrs Witmer, all those in favour? Opposed? Defeated.

Before we start into section 1, I believe legislative counsel has a response to Mr Offer's request on undertaking number 8 yesterday.

Mr Mark Spakowski: I propose just going through the general drafting concerns relating to purpose clauses. I understand this is in relation to a proposal to add to the Workers' Compensation Act that a purpose of the act be to require the board of directors to act in a financially responsible and accountable manner. But my remarks will be primarily general, relating to what a purpose clause does and what it doesn't do.

I'm going to speak briefly about what the effect of a purpose clause is and then I'll touch on two lesser mat-

ters that relate to how a purpose clause is actually constructed from a drafting point of view.

The effect of a purpose clause is limited. A purpose clause is not directly enforced. The way a purpose clause is used is in interpreting other provisions of a statute or of regulations under a statute. Courts interpret provisions in their context. "Context" includes other provisions or other statutes or even conditions existing at the time an act was passed. Part of the context that a court considers is the purpose of the act. That purpose can be deduced from the act itself or it can be found in a purpose clause if an act contains such a purpose clause.

It's difficult, however, to ascertain exactly what effect a court would give to a purpose clause. That's because the purpose clause isn't given direct effect itself. It's only used in interpreting other substantive provisions in the act. As a simplification, it's probably reasonably accurate to say that the effect of a purpose clause is limited to interpreting provisions in the act that are either vague or ambiguous. Except for that, it won't have any significant effect on interpreting the act at all.

Because a purpose clause is of limited effect and what effect it does have is somewhat uncertain, from a drafting point of view, drafters prefer to use substantive provisions to effect whatever the desired change in the law is. So that's my explanation of what the effect of a purpose clause is and why drafters prefer to put things in substantive provisions rather than purpose clauses.

As far as how specific purpose clauses are constructed, a purpose clause should reflect what's actually in the bill. A purpose clause should not set out what one wishes the purpose of the act were; it should actually reflect what is in the act. A purpose clause should also—it's safer from a drafting point of view if a purpose clause is confined to the main purposes of an act.

When purposes other than the main purposes, subsidiary purposes, are put into a purpose clause, there's a danger that other equal purposes or purposes of greater importance will be skipped over. A court will probably look at the purposes that are set out explicitly in a purpose clause as establishing a kind of hierarchy that they will give precedence over the purposes that are set out in the purpose clause over purposes that may be important but which are omitted from the purpose clause.

To the extent that a lot of purposes are collected in a purpose clause, there's a danger from a drafting point of view of missing things or leaving out purposes which are also important in an act. That's as much as I wanted to say right now. If there are other questions, I'd be happy to try to answer them.

Mr Offer: Thank you for that explanation. My first question is that this was pursuant to an undertaking that was provided that dealt with why the financial accountability aspect of the legislation can't be in the purpose clause. I guess the first questions is: Can the financial accountability be inserted in the purpose clause?

Mr Spakowski: The remarks I addressed—and from the drafter's point of view there are disadvantages and advantages of both approaches. It can be done. The difficulty is that the legal effect of it may be somewhat

uncertain because it's not given direct effect. So the one limitation is that it won't have any direct effect; then its actual effect becomes uncertain because it's only used in interpreting other provisions. It can be done.

Mr Offer: I guess my next question is: That rationale can be used on all of the subsections in the purpose clause. Is the position that you've made plain today something equally referable to any section or in fact to any purpose clause in any piece of legislation?

Mr Spakowski: The remarks I've made are certainly relevant in being cautious in using a purpose clause. As you recall, I said that a court considers the context. The purpose of the act is considered part of the context whether it's in a purpose clause or not. So as long as the purpose clause sets out what one would normally assume to be the purpose of the act anyway, there's much less danger, because a court would deduce that as the purpose of the act in any event, whether it's explicitly set out in a purpose clause or not. The danger arises when more and more is put into a purpose clause that may not be obvious.

Mr Offer: One of the issues under the bill, as you well know, dealt with the financial accountability of the board, and that manifests itself in a whole variety of ways. But the bill itself, section 12 of the bill, refers to a new section 58. It repeals 58 and 59 and inserts a new 58 which speaks to the board of directors acting in a financially responsible and accountable manner. So I think in that respect, inserting a financial accountability phrase in the purpose clause is probably not something that's not seen anywhere else in the legislation because of the fact that the government has introduced the new section 58.

I understand the issue around interpretation and being used by the courts as an interpretative guide and the fact of its not being terribly certain. I certainly understand that and appreciate your thoughts on that but I guess the feeling I have is that if financial accountability were placed in the purpose clause it would not be coming out of the blue, because of the fact that we have a new section 58.

The question that we have and have always brought forward is, how far does section 58 extend? Does it extend to all aspects of the operation of the WCB, such as WCAT, or not? I think the government has now made it plain that section 58 does not apply to decisions of WCAT, of an appeal nature. But if financial accountability were placed in the purpose clause, then would it not be the case that WCAT would also fall under that purpose as being a creature of the act itself?

Mr Spakowski: It's probably the case that putting something in the purpose clause will give it wider scope, although more uncertain scope. It would depend on exactly how the provision were worded. A provision of the purpose clause that relates to the board of directors of the Workers' Compensation Board may not be sufficient to affect the operation of other bodies.

Mr Offer: So I guess just for my purpose, for my understanding, the financial accountability could be inserted in the purpose clause, recognizing that it's still used as an interpretative guide by courts and that in itself

results in an uncertainty, but if it were placed in the purpose clause, it would have a wider application than that which now applies in the legislation under the new section 58.

Mr Spakowski: If I understand the question to be putting it in the purpose clause instead of a substantive provision, it's conceivable that it would have wider application if it were put in a purpose clause, but it may have a weaker application in the sense that it wouldn't be directly enforceable as a duty against the board. That should be done in a substantive provision. I hope that's clear enough.

Mr Offer: Crystal clear. Thank you.

On a point of order, Mr Chair: I'm wondering if the government can indicate to me whether there are any undertakings that you have taken responsibility for that you have not yet responded to. Are there any outstanding questions?

Ms Murdock: No, it is complete. All of the undertakings that were taken during the period of presentations have been done and submitted in the materials by the clerk.

1450

Mr Offer: Thank you for that. Just as a follow-up question, there is one answer that I would just like a quick clarification on, and that's the \$200, by a memo under the date of September 21, on page 3—I'm referring to a memo from—have you got that? It's your answer. Are you there now? Tell me when you're there.

Ms Murdock: Page 3?

Mr Offer: Yes, undertaking number 14. You've provided the financial impact of the extension and I would just like to know: The last three lines of undertaking 14, and in fact the last line, talk about a one-half-billion-dollar impact. Is it one-half billion in total or is it one-half plus one-half?

Interjection.

Ms Murdock: I'm being advised it's one-half plus one-half, but I'd rather have them explain it than me.

Mr Mitchell Toker: The costing in the last two paragraphs of undertaking number 14—the second-last paragraph in the three bullets directly under that describe the financial impact of providing the \$200 to that group of workers.

Mr Offer: Right, I understand.

Mr Toker: The last three lines describe the impact on the indexing of adding that group to the exemptions from the Friedland formula, and they are as shown there: \$16 million in 1995; \$125 million to the unfunded liability in 1995; and \$500,000 to the unfunded liability in 2014.

Mr Offer: I'm sorry, it must be myself. That \$500,000 to the unfunded liability in 2014, is that the same \$500,000 as applies in the—

Mr Toker: No.

Mr Offer: So it's basically \$1 billion?

Mr Toker: That's right.

Mr Offer: Okay. Thank you. I just wanted to get a clarification. I appreciate it.

Ms Murdock: Just for the record, I have Mitchell Tokor from the Ministry of Labour with me, and Sherry Cohen, also from the Ministry of Labour.

The Vice-Chair: In section 1 there's a PC motion.

Mrs Witmer: I move that section 0.1 of the Workers' Compensation Act, as set out in section 1 of the bill, be struck out and the following substituted:

"Purposes

"0.1 The purposes of this act are,

"(a) to provide fair compensation, health care benefits, rehabilitation services and return to work opportunities for workers who sustain personal injury arising out of and in the course of their employment or who suffer from occupational disease;

"(b) to require the board of directors of the Workers' Compensation Board to exercise the highest level of financial responsibility and accountability in administering the workers' compensation system in Ontario;

"(c) to ensure that any proposed change to benefits, services, programs or policies under this act is thoroughly analysed in order to evaluate the overall consequences of the proposed changes on workers and employers and report on them to the provincial government; and

"(d) to ensure that the developments in the understanding of the relationships between work, injury and the workers' compensation system are monitored so that,

"(i) generally accepted advances in health sciences and other related disciplines are reflected in benefits, services, programs and policies consistent with the above principles, and

"(ii) a continuing effort is made to improve the efficiency and the effectiveness of the workers' compensation system."

What I have done here, on behalf of the PC Party, is to put forward an amendment which would replace the purpose clause in Bill 165 with the PLMAC framework document wording. As I indicated at the outset, it was the Premier himself who called upon the PLMAC to achieve consensus in reforming the Workers' Compensation Act, and one of the central features of that consensus was the recommendation that there be a purpose clause included in the statute.

The purpose clause that was endorsed by members of the PLMAC—it's the one that I have here before me—was designed specifically to balance the interests of business, workers and the public at large.

As a result, we have reintroduced the purpose clause that was agreed to by labour and by business as part of the accord. We were very disappointed, of course, to see the very narrow scope of the purpose clause that had been set out in Bill 165 and the absolute disregard for financial responsibility and accountability. We certainly believe that this purpose clause which we have reintroduced is far superior to the clause proposed in the bill, because it does now again clearly articulate the issues of financial responsibility and integrity as well as stakeholder accountability and employer, WCB and governmental responsibilities.

That's, I guess, what is so absolutely essential: the fact

that there be contained in the purpose clause, which of course is going to govern the interpretation of the bill, the reference to financial responsibility. We need to make reference to the costs and we need to take a look that any changes that are going to occur, any service changes, programs, policies, are going to be thoroughly analysed in order to evaluate the consequences of the proposed changes on the workers and employers and report the same to the provincial government. As it is currently drafted, the purpose clause of this bill doesn't take into account when new provisions or policies are considered by the government or the WCB.

So I would certainly recommend that the people present today support the amendment we have put forward. As you know, there was very, very widespread support from many of the presenters that appeared before the standing committee on resources development to entrench the concept of financial responsibility in the purpose clause. In fact, the Premier himself recognized the need to be aware of that, and so I would suggest to you that you would give very serious consideration to agreeing with and supporting our amendment.

Ms Murdock: Again, I have a feeling that we'll be saying much of the same thing over and over again. But I know that when the people were sitting down to discuss at the PLMAC they were looking at how the board could be improved and they were trying to find something that both sides could agree on, and that they came to this language saying that that's what they would like it to do.

However, the reality is that it's unenforceable in the purpose clause, and I think, actually, leg counsel made that pretty clear, although not specifically, on each of these points but basically said that it is not achieving—if you put in the purpose everything that's in the PLMAC agreement, and I will address myself to that in a moment, as is in this PC motion, it is not achieving the desired intent of either labour or management. And on the latter comments of Mrs Witmer, I would say, nor should the purpose clause be a deciding factor in whether or what benefits in the future should be applied. That's first and foremost.

1500

Addressing the specifics, when we went through this afterwards in terms of drafting and in terms of having it have some impact and import and legislative teeth—it's pointless to put something in a bill that you can't do anything about it afterwards—we did take the first provision under Mrs Witmer's motion sub (a), and it is in sub (1), Bill 165, and the only difference is that we've added survivors and dependants to the last part of that.

Sub (b), which is in Mrs Witmer's motion, is requiring the board of directors to exercise the highest level of financial responsibility and accountability. In the amended section 58, which is section 12 of the bill, and as you can see—we'll be coming to that shortly—we have taken that and are amending it to include it in the purpose clause. Sub (c), to ensure that any proposed changed benefits etc, is in subsection 15(3) and is enforceable there and would not be enforceable under the purpose clause. Sub (d), to ensure that developments and the understanding of the relationships etc, is also in subsec-

tion 15(3), again for the same reason.

So I would say that we have taken what a group of people in negotiations have done in terms of what their intent was and we have included it in the bill. All parts of that are in this bill, albeit not in the purpose clause because, as I stated, it would have little or no effect there, so that the obligation is on the board of directors in terms of how they govern the board.

Mr Offer: I'd like to ask the parliamentary assistant some questions on this. I'm a little confused about the issue about the purpose clause and certain aspects of it and your position that in a purpose clause it really doesn't have any effect; it's really got to be in the legislation. Doesn't that, if we follow your argument to its logical conclusion, indicate that there should not be any purpose clause because there is no effect?

Ms Murdock: No, I don't. I think that it was a good idea to have it stated, in a 1990s context especially, what the purpose of the act is. But we heard from predominantly employer groups about having financial accountability and responsibility in the purpose clause. We heard that time and time again throughout the three weeks of public hearings, that it should be in the purpose clause, and I stated then that I did not believe it should be in the purpose clause if you wanted to have any legal effect. But we are listening to what the presenters said to us, and they asked specifically that it be in the purpose clause and said that bipartisanship was going to be a problem if we did not put it in the purpose clause.

So we have listened to the employer groups on that subject and have included it in the purpose clause—well, we will have once we have that motion before us. But in terms of this motion before us—you're a lawyer, Mr Offer. You know as well as I that the purpose clause is there to give you a taste of what the bill is but the actual meal is in the other parts of the bill.

Mr Offer: I think that you and I disagree on the purpose clause. I'm not talking about the substance of the purpose clause right now because I think purpose clauses are important, and I think that if things are found in a piece of legislation, I don't care whether they're in a preamble or a purpose clause or a section; they're there for some purpose and there is the opportunity of people to interpret why we did it. The fact that you say, "Well, it's okay that it's here because it really doesn't have any effect," I think just for me principally that's not the route that I'd like to take. I think it is important. I think it sends out a message as to how people who designed a particular piece of law felt about it, what was important to them, and if there was ever any discussion, any disagreement over any of the sections of the legislation today or tomorrow or 20 years down the line, they were going to be able to take a look at the purpose clause to help, as a tool, in interpreting what it is that you meant in 1994.

So, for me, the words in the purpose clause are pretty important, and that's why I have some significant concerns with your response to the amendment that was put forward, because I haven't dealt with the substance of it all, but rather the response saying: "Well, you don't have to worry about all of these terms. They were part of the

PLMAC agreement and they're found somewhere else," or, "It doesn't really matter." I happen to feel that it does matter and, because I feel it matters and because I feel we have to be very careful as to the wording and what it means, that we have to take a look at the wording itself.

I have no difficulty with the amendment as put forward, and we will be shortly dealing with an amendment put forward by my party and the Labour critic, Mr Mahoney, that basically does much of the same, but I think we have to recognize that the wording is wording that was arrived at due to an agreement. That took time and took some great thought. The time and thought, in terms of the wording, is one area, but also where it's positioned in the legislation was another issue. It was clear that they felt that it was to be used almost as a guiding principle in any interpretation of any following section of the legislation.

So I think it sends out a very clear message as to some of the areas that the workers' compensation system should be involved in, in principle and in purpose, areas such as health care benefits, rehab services, return to work and requiring the board of directors to exercise the highest level of financial responsibility and accountability in administering the system in Ontario. I believe that that will encompass and embrace decisions in and around the appeals tribunal.

We know that there are matters that are now before WCAT that have the potential of a major financial implication, and I don't have to speak as to whether one supports or does not support the particular areas of compensability. The question we have to answer in this legislation is whether the board of directors should be primarily responsible. I think that the purpose clause that has been arrived at by PLMAC and is part of this amendment clearly indicates that the responsibility is with the board of directors, and that responsibility extends to decisions that are made through WCAT in a variety of other ways. Their responsibility is to injured workers in this province and their responsibility is to the funders of the system. The stronger the system that is created, the better the interests of all are protected.

1510

So I have a real concern as to a certain passing interest in the words of a purpose clause in that they really don't mean too much, because I think that they do mean something and that it sends out a very clear message as to what the workers' compensation system is all about: fair compensation, health care benefits, rehab service, return-to-work opportunities and financial responsibility. Who can disagree with those purposes in the system in this province? I guess my question is: Why does the government disagree that that is not a legitimate purpose in the operation of the workers' compensation system?

Ms Murdock: There's a whole bunch of things there. But first of all, I need to say on the first part of your comments that I am not a proponent of having both a preamble and a purpose clause. I never have been. I think that you should have one or the other and that whichever one you choose to use—in this case, it's a purpose clause—sets the tone and the interpretation for the whole act.

There's no other word to say except that, whenever there is any ambiguity or vagueness in a particular portion of the legislation, it is used for interpretation purposes.

It is the government's view that the section that you're referring to requiring the board of directors to exercise the highest level of financial responsibility and accountability in administering the workers' compensation system in Ontario, on the grand scale of things the tone would be there but it doesn't put the obligation there.

I tried to explain that during the public hearings to the employer groups that came forward and I really, truly never got them to understand, as I am not getting seemingly for you to understand, that if it came to a court case—and that's what I'm saying—for whatever reason, and it was in the purpose clause, our view is that it would not have the impact or the requirement to force the board to do that, but it would have a board obligation in a section regarding obligation and duties of the board.

The other thing is, it was never our intent ever—because I know you've asked the question a number of times, Mr Offer, throughout the public hearings on the impact of WCAT decisions—as the government to include WCAT in this. I should also say that I will never, personally and I think I speak for the Minister of Labour on this as well, agree that in terms of an injured worker, anyone who's injured on the job or suffers an occupational disease on the job—and I only got to ask the question to one employer group—that the determination should be, "You've got the disease, but can we financially afford it?" and that the answer is, "No, we can't financially afford it; therefore you don't get it."

I will never agree to that. So if you understand that premise, that's the way we're coming at this bill. If you agree with me on that, then we might meet eye-to-eye on some things, but if you don't agree with me on that, then we will never see eye-to-eye because that is the premise from which we are coming and that is what, as far as we're concerned, we'll be voting upon.

Mr Offer: Then I guess my question is based on your last response, that on the basis of expense and affordability, if WCAT, on appeal, overturns or embraces a new type of benefit for a new area, under the current legislation, when it was referred back to the board, they would have to comply with the decision of WCAT.

Ms Murdock: They can delay for a while, but yes, in the end, if WCAT, when it was asked by the board to review, maintained its decision, yes, the board would be required to follow it.

Mr Offer: And if we follow that through, then the board would not have the power, apart from delay for a short period of time—

Ms Murdock: Well, they can delay quite a while, as you know.

Mr Offer: They would not be able to say on the basis of the financial accountability portion of the purpose clause, "We do not have that at our disposal," in terms of dealing with the decision of the appeals tribunal. If that were the case, then you will, I would expect, agree that the government's figures as to what the unfunded liability

will be in 2014 are more of a wish than of anything substantive.

Ms Murdock: Well—

Mr Offer: One decision explodes those figures into oblivion.

Ms Murdock: If I might, Mr Offer, since WCAT has been in place since 1985, that has been the case all along. I know that the whole issue of WCAT right now has been on the issue of stress. Everybody's talking around it, but that's what everybody is talking about. If you look at the decisions of WCAT thus far, they have been quite—and I use the term "conservative," small "c"—in terms of deciding who would receive stress benefits, other than traumatic stress, which is a policy of the board and has been agreed to by the board where for obvious reasons if you see your partner killed or whatever, there is automatic traumatic stress. So that's been accepted. It's the issue of doing the job caused the heart attack and that kind of thing that has been at issue at WCAT.

So they have been aware, I think, of the concerns of the board, but I don't think that you can say that if WCAT were to decide that whatever it was that was before them would put a financial onus on the board, that should be the deciding factor. I don't think we would want a society that would do that.

Having said that, I think that with the governance provisions—you can't look at everything in isolation here—whereby you're going to have a CEO and a president who is chosen by the board of directors, and it's going to be operated more on a corporate level than it has been in the past, you would have to find those finances or the monies for that in other ways. That's what businesses do all the time whenever different things affect their markets. The board is going to have to be very fiscally responsible and I thought we had done it, but we had the business groups coming in here themselves saying they wanted it in the purpose clause. So be it. We're putting in a recommendation to do that, even though I don't particularly agree with them.

Mr Offer: I guess I just don't get this, because the Premier of the province said, "A 'purpose clause' will be added to the Workers' Compensation Act which will ensure that the WCB provides its services in a context of financial responsibility." There was no limitation in that area. I just don't get it when the Premier of the province says that the WCB is going to be financially responsible and the bill of that same government limits what the Premier of the province said. I don't get it how you can do it both ways.

Ms Murdock: Excuse me here, but I've been listening to Mr Mahoney for three weeks talking—whenever he was talking to employer groups saying one thing about financial responsibility, and then talking to the injured workers' groups and saying, "And this is being done on the backs of the injured workers." Both sides of the mouth here. The PLMAC agreement never included WCAT. If you look anywhere in the PLMAC agreement that was struck, they never included WCAT.

We have asked, and it is going to be part of the mandate of the royal commission, that they look at that

relationship. Bill 165 never addressed WCAT and the ramifications of WCAT decisions. It will be discussed under the royal commission. It is beyond the scope of this bill and it will be addressed in the royal commission. That's all I can say. I've already stated my own philosophical view on injuries and workers and cost.

1520

Mr Arnott: I'd just like to indicate that I would like to support this amendment, probably not a surprise to the government members, but I'm having a bit of difficulty following some of the logic of what I've heard in this discussion from the parliamentary assistant. Again, that might not surprise the members opposite.

If we're going to have a purpose clause in the bill, the purpose clause ought to be meaningful. It shouldn't be just a political statement, and if it is, I don't think we need a purpose clause. I think it should be the point at which the rest of the bill is interpreted.

I heard the parliamentary assistant say that the purpose clause would set the tone for the bill and I heard her say it would be used for interpretation when there's a misunderstanding or when there's a dispute as to what the legislation actually means. Yet I also believe I heard you say that it really doesn't mean all that much and that's why you reject this amendment.

I have all that discussion here and then I also have a press release that was sent out by the Ministry of Labour yesterday, "Key Amendments to WCB Reform Bill Announced." This is the Ministry of Labour's press release and it says:

"Following almost unanimous advice from the business community, the government proposes to amend the purpose clause of the bill to include a requirement that the WCB board of directors must govern in a financially responsible and accountable manner."

I would like to see an amendment to require the whole system to be managed in a financially responsible manner. I think that's something that's desirable. That should have been implicit since 1914. There should have been financially responsible administration of the whole system. If there wasn't financially responsible administration, the board should have been dismissed and the administrators should have been dismissed.

Ms Murdock: It's 80 years in the making we've come to this day. You guys were there for 43 of those years.

Mrs Witmer: Good years, Sharon.

Ms Murdock: Yeah, right.

Mrs Witmer: That's when we had consensus.

The Vice-Chair: Order, please.

Ms Murdock: If you're talking about management, if they weren't doing their job, then they should have been removed—we have not been the government except for four of those years. I think we have tackled an unbelievable problem that no one disputes is a problem. So that's number one.

I'm not saying it doesn't matter what's in the purpose clause. I don't want to have you misunderstand. I think it's important. As I said, it's the flavour of the bill. I

don't know how to describe it any other way. It is used, as I said, for interpretive purposes.

In terms of legal effect, because both Mr Offer's and your questions are tied together, if I as an injured worker was diagnosed with a disease or an injury and WCAT decided I should be reimbursed or compensated for that injury or disease, it goes under section 93, back to the board, and they say: "We really can't afford to cover that, because if we cover you, we now open the door for a myriad of cases. We can't afford to do that, so we're not going to pay you"—basically, that's what would happen under your scenario—then I as the worker can go to court under a writ of mandamus and I can get the courts to decide.

I am saying that that section in there and the purpose clause, the court would not look upon it as a legal duty for the board and the board would not have a legal duty to say, "No, we cannot afford to pay you." They would be required to pay. It might take a little longer to get there, but the board in the end would have to pay. They would have a responsibility, because that is the duty of the board. I don't know how to say it any other way.

We have listened. We didn't put it in originally in the purpose clause, for the reasons already stated. Then after listening to three weeks of public hearings and having the employer community almost unanimously, as was stated in the press release, say that it wanted it there—and basically, we had two or three particular groups of employers who said very definitively at the end of their presentations that if it wasn't in the purpose clause, they would have great difficulty working in a bipartite mode, which basically says, "We won't participate in the bipartite process if you don't do this."

It's a shame that one has to put it in a purpose clause on that basis, but if that's what they want, then so be it. In actual fact, I believe that what we were doing in the original bill was probably more to what the employers' intent was than this is, but so be it; we listened to what they had to say and we are abiding by their request. Our amendment will include the owners.

Now, there is one other point that has to be stated too, because you said it and Mr Offer said it: that you wanted this to permeate through the entire system, the financial responsibility.

Mr Arnott: He said that.

Ms Murdock: Certainly Mr Offer did—

Mr Arnott: Yes, he said it was implicit.

Ms Murdock: —but I thought you had as well. The obligation is on the board of directors to operate in a fiscally responsible manner. You can't have the claims adjudicator—and I did say this during the public hearings. I don't know if you were here for it, but I did say quite emphatically that the claims adjudicator should be asking the question: "Did the accident happen? Is it work-related?" That's the question that the claims adjudicator asks, not, "Can we afford it?" because the claims adjudicator, in all likelihood, probably doesn't know whether they can anyway. That's what your board of directors is there for. So I will not agree to any proposal that's put forward that requires that kind of requirement

on all levels and all employees of the board.

Mr Hope: Now we're back dealing with the amendment that's being put forward by the Conservative Party. As we have an opportunity to listen to the debate that goes on, we also have an opportunity to flick through the amendments that are being presented and I notice the Conservatives were not very comfortable with the first amendment, so they also put a second amendment. Just in case option (a) doesn't work, we've got fallback plan option (b) to deal with, an amendment to that clause. It would have been nice if they were certain about themselves and put one amendment forward, versus two amendments about that particular clause.

But I want to specifically focus my comments on the amendment and why I will not be supporting the amendment put forward. We must reflect what the purpose of the act is for: to provide fair compensation for workers who have sustained personal injuries arising out of and in the course of their employment. I think that is very important.

If I read the amendment that is being put forward—and I heard Mr Arnott say that if this was a political statement, that's wrong. I read it as a political statement because it's taken word-for-word from the 1993 document, November 17, 1993, from the business caucus reform proposals. Other than adding a few ands, ifs, buts or "the," it's very reflective. They're doing it for a political statement because they even have another amendment which is dealing with the same section and is amending it and taking away some of the important values behind it because the business community kept coming before this committee and saying, "In the purpose clause, there must be financial accountability."

In the further amendments, you will see that the government will be introducing an amendment to this section to require the boards of directors of the Workers' Compensation Board to act in a financially responsible and accountable manner in governing the board. I believe that's what the business community was putting forward, but the amendments that are being put forward by the Conservatives right now put a higher priority on finances than it does to the worker who has been injured in the course of employment. I believe that the amendment where we're appropriately putting it has to be in sight of—and the parliamentary assistant clearly indicated that if you get into circumstances where you're saying "Yes, you're injured and yes, it is the cause of the employer, but we can't afford it, so tough luck," that is the wrong approach we're trying to do to make sure that people are compensated for an injury that occurred in a workplace through the course of employment.

So when I'm looking at this amendment—you talk about political statements; you've actually done it because you were so insecure of the amendment you had to put an alternative amendment with it. You've put the priority of the issue about financial accountability and reporting to the government before you actually even deal with the true context of what needs to be done to the injured worker. Let's face it: Workers' compensation problems occur when injuries occur in workplaces through unsafe working conditions and when you do not have a return-

to-work program that is suitably meeting the needs of the injured worker to return him to full employment.

I believe the purpose clause, when this whole reform was intended and when the two groups came together to ultimately come up with a package, the two main purposes are to provide benefits to injured workers and help rehabilitate a return to work and, within that, to make sure that the boards of directors are financially responsible.

1530

So with the amendments that I see—and it is one of the fortunate benefits of the committee that we have an opportunity to examine all the amendments that are being put forward, and I find it very ironic that the Liberals asked a lot of questions yet have just one simple amendment, which doesn't seem to be too bad, but really asked a lot of questions about nothing. It's amazing that we have to answer the questions for the amendment being put forward when it's a Conservative amendment. I guess I just don't understand that process of it.

To look at the amendment, to look at the legislation, to understand the intent—and Mr Offer says it's got to be in the language and don't leave it for interpretation. How much clearer can you be with the writing of the bill which is in section 1, which highlights the four areas dealing with fair compensation, to provide health care benefits and rehabilitation and to provide rehabilitation programs to survivors and then putting in place also another paragraph that just strictly talks about financial responsibility?

I look at the wording that is being put forward by the Conservatives, which would leave—how would you call it?—a lawyers' field day for interpretation, to find out what comes first: the injured worker, the financial accountability, the financial accountability to the worker—it leaves too much discretion for interpretation of the legal act when why we are here in this Legislature is to put legislation in place so that general people, people who are out in the public, can read the act, who are going to maybe become victims through an injury that they sustained during working.

When I look at amendments, I look at all amendments that are being placed forward. I will not be supporting either one of the Conservative amendments—I will be supporting the government amendment, which does comply with the business community—nor will I be supporting the Liberal amendment that's being put forward. I believe that if we can move on with the amendments, the employer community should be satisfied by all their presentations that they made, because I've had an opportunity to look over a number of them, which I've carried with me, and I believe they've asked for, in direct wording, that there be financial accountability, and I believe the amendment that the government is putting forward will address the major concern that they talked about.

Mrs Witmer: Do you know what? I think I need to help Mr Hope. I think I need to make him aware of the fact that in putting forward two alternative suggestions for the purpose clause, there was a reason. First of all, the amendment we're dealing with presently was the pro-

posed purpose clause that was accepted through consensus by both the business and the labour communities as part of the accord. So I thought in all fairness, since it had been a purpose clause that had been reached through consensus, that we should put it back on the table.

Mr Hope: I just wanted the identification that it's a political statement.

Mrs Witmer: Part of the process that we're going through, Mr Hope—and maybe you don't want to take the time—is to listen to all of the players, all of the interested stakeholders in this province. We are just not beholden to one faction or the other and this does reflect a consensus reached by two major stakeholders in this.

The second proposal that we have put forward as far as a purpose clause is concerned addresses the issue of incorporating within the purpose clause the financial responsibility framework, which we know was to be the cornerstone of the reform package. It was your own Premier who, when he set up the group, indicated that we needed to reform the system in order to pay workers fairly and meet the test of being financially sound.

So what we are endeavouring to do—in fact, I thought that was the reason for clause-by-clause—is ensure that the viewpoint of all of the participants at the hearings would be brought forward to this committee. If Mr Hope and the NDP are not interested in discussing all of the options, then perhaps we should adjourn at this point in time.

I would also say, in response to what's being said, that if you think your amendment to the purpose clause addresses the concerns of the business community, you are wrong, wrong, wrong. If you wonder why business is now so wary of the NDP, even when you are trying to mollify the business community and management, as you have attempted to do by making your motion, I can tell you, it doesn't respond to the concerns that were given. We have learned that since your amendment has been made public.

Because, I ask you, what business person in their right mind would agree to sit on the board of the WCB when the new purpose clause that you are proposing says that only board members must be financially responsible; not the administration, not the WCAT, not the WHSA? At the same time, we have a bill which orders the expenditure of hundreds of millions of extra dollars in increased pensions, and we have a government that is going to continue to direct the operation of the board for at least a year. Folks, it doesn't add up.

You have failed totally to recognize what it is that the management community was looking for. Your motion does not address the concerns of putting in place a financial responsibility framework that was to be the cornerstone of any reform of Bill 165.

Ms Murdock: It suddenly struck me, as I was reflecting on the comments made by the opposition members, that the PLMAC agreement, which seems to be the holiest of grails—or, at least, is being represented as such—was set up. No government, I don't care whether it would be a Liberal government, a Conservative government, an NDP government, any-party government, would

take an agreement that was negotiated between two parties and stamp "Bill 165" on the top of it and present it exactly as such. Otherwise, there would be an entire group of legislative counsel and policy people that we wouldn't need. There would be a whole bunch of people out of work. Because when you do legislative drafting of a bill, any bill, I don't care what it was, and all of us have been in government now so we recognize—well, excuse me, but your party has been. We all realize that you have to have it set up in appropriate language. The process is quite lengthy.

Once the government has indicated its direction to its staff, sets up how it wants to go, its legislative counsel within the ministry drafts it, sends it over to the AG's office for approval for the language that's used so it's Ontario language that's used in legislation, and then sent back to the ministry to make sure the intent has not been changed somewhere along with the change of language, and then it is sent back until you finally get it all approved and you can do first reading.

To think that we would take the PLMAC agreement, as it is written, and we all know what it looks like—it's got different sections and so on—and just take it holus-bolus and say that that's the way it has to appear in the legislation is unrealistic. As I stated earlier, when you look at all of the purposes, as stated in the PLMAC agreement, they all appear within the bill in what we felt was an enforceable manner and a legislatively correct manner.

1540

The last thing I want to say is that what I'm hearing from Mrs Witmer is that because we aren't making the financial accountability and responsibility a systemic board responsibility, we aren't agreeing to what was in the PLMAC agreement, which is not true, because this motion before us is the exact wording of that, as you stated. It says, "To require the board of directors," and I put emphasis on "the board of directors" of the Workers' Compensation Board, "to exercise...." That's what was in the PLMAC agreement. That was not systemic board financial accountability.

Mrs Witmer: That's why we have motion 2.

Ms Murdock: Yes. I'll speak to motion 2. I'm already ready for that one. In any case, I'm just saying it's important to note that it is the board of directors' responsibility.

Mr Ferguson: Very briefly, I view this much the same as a mission statement for a corporation. I don't think any corporation would be held liable by its employees as a result of the mission statement outlining the goals and objectives of the corporation. Some people hold up the business community as some kind of icon out there, that everything the business community says is correct and everything the business community suggests ought to be enacted.

The obvious question is, if the business community and people in the business community are so right and so correct all the time, (a) how did we get into this situation and (b), more importantly, why is it that only one out of every three businesses that start up makes it a year and

one out of every five lasts five years? Why isn't the success rate higher? I'm sure that the response to that would be, "If the government would get out of the way; it's the government's fault that the businesses don't succeed more than they do."

I think those are some thoughts to ponder.

The Vice-Chair: Further discussion on Mrs Witmer's motion? Seeing no further discussion, all those in favour? Opposed? Defeated.

Second motion by the PCs.

Mr Klopp: I think we've heard about this one.

Mrs Witmer: You're right. I tried to get it all in.

I'd like to move at this time that section 0.1 of the Workers' Compensation Act, as set out in section 1 of the bill, be struck out and the following substituted:

"Purposes

"0.1 The purposes of this act are to provide, in a financially responsible and accountable manner,

"(a) fair compensation to workers who sustain personal injury arising out of and in the course of their employment or who suffer from occupational disease and to their survivors and dependants;

"(b) health care benefits to those workers;

"(c) rehabilitation services and programs to facilitate the workers' return to work; and

"(d) rehabilitation programs for their survivors."

We have, in passing, discussed this amendment and I believe personally that this is the amendment that would most correctly address the cornerstone of what was intended, and that was to incorporate a financially responsible framework and to ensure that there was balance injected into the system, and that we did ensure that there would be future benefits for injured workers as well as having a system that was financially responsible and accountable at all levels that would ensure that any changes in services, benefits, programs or policies under the act would be thoroughly analysed in order to evaluate the overall consequences of the proposed changes on workers and employers, and also within the context of financial accountability.

So we know and we must always remember that one of the reasons that the Premier had for putting in place a review of the system, the reason that he asked business and labour to come to the table, was he himself indicated concern for the WCB's financial situation, which, as I have told you this afternoon, does stand with an unfunded liability of \$11.7 billion. He was also concerned about its accountability to the stakeholders.

Therefore, we have put in place this purpose clause because we do not believe that the government's purpose clause or the amendment to the purpose clause does anything to restore the financial stability and the accountability that is required within the workers' compensation system, and I would hope that all members here today will remember what was said throughout the course of the discussions. They will remember that there was a consensus process used, and what we're trying to do is ensure that the purpose clause that would be in place in Bill 165 would reflect the concerns and the

interests of all the parties in the discussions.

We believe this would accurately address all of the concerns that have been made and will ensure that we have a system that can sustain itself and will also have sufficient funds to meet the needs of the injured workers in the future. Ultimately, that has to be our concern: Do we have a system that is financially sustainable? Is there any possibility that the system could go bankrupt in the future? If that concern is there at all, we need to look very seriously at ensuring that we add the clause that we've added here, and that is, prefacing the four points by saying that the purposes of the act must be to act in a financially responsible and accountable framework.

Ms Murdock: This is insidious. It is mind-boggling to me. In fact, it's even worse than the first motion, for the very fact that it is in a financially responsible and accountable manner covering fair compensation to workers who sustain personal injury, health care benefits, rehabilitation services and programs and rehab programs for the survivors.

It's quite mind-boggling that any government that believes in fair compensation for injuries sustained on the job would even want to look at that in terms of basing it on a financial perspective. It definitely links the adjudication and revenue jobs that the board does. It still, however, does not make it a legal duty unless it's ambiguous or vague within the legislation, so we still sit there with the whole idea that unless a provision within the legislation was vague or ambiguous, you would not even go to the purpose clause to look to see what your legal duty was.

I'm not going to talk lengthily on this because in the first discussion we went through my basic philosophy and the ministry and the government's intent here in terms of coverage of benefits, but I think we all need to be reminded that if the Workers' Compensation Act was not in place at all and workers were still able to sue their employers, when the court awards benefits, the court does not sit and ask whether or not the defendant, being the employer, can pay for it. The benefit is made. The court awards it, or doesn't award it, as the case may be, which is exactly what is being done in the present system; it's either awarded or not awarded, and then you have appeal mechanisms to go through. But there is no enforceability of judgement. This would not do that.

So if the intent, as what is being stated, is that they want the board, the board instead of the board of directors, to have that responsibility, then putting it here and in this manner is not going to achieve that purpose. So I'm not supporting this one either.

1550

Mr Gerry Phillips (Scarborough-Agincourt): This is a very interesting discussion because to me it's in everyone's best interests that the workers' compensation act in a financially responsible and accountable manner. Everybody's best interests. If this is a program that jeopardizes its financial health, lack of health jeopardizes the future benefits of everyone. It almost seems self-evident that the board should be acting in this manner. Perhaps had this been part of the purpose clause before, we may not have had all the challenges.

So putting it in, to me, makes sense. Not having it in—I'm not sure; does that then say they don't have to act in a financially responsible and accountable manner? If you say they don't have to act in a financially responsible and accountable manner, then you don't put it in. If you say they have to act in a financially responsible and accountable manner, you put it in.

If all of us are agreed they have to act in a financially responsible and accountable manner, and all of us agree that's in the best interests of the workers of this province, why in the world would we not put it in? What possible reason would there be to not have it there? By not having it there, I repeat, is the board allowed, therefore, to operate in a financially irresponsible and non-accountable manner? For the life of me, I'm having difficulty with the logic of the argument that's being advanced here, because it just seems so self-evident to me.

Ms Murdock: I think we are all in agreement that the board has to act in a financially responsible manner. The board of directors especially has that obligation and duty.

We have to remember that this is a corporation, and as employees of the corporation they must abide by whatever guidelines, policies and so on that their board of directors put through to them. For the first-level claims adjudicators—I'll use them specifically—to know all of the details and ramifications of the financial picture of their corporation would be like asking the technical supervisor—not even supervisor, one of the technical operators at Xerox to know what was happening in the boardroom upstairs when they were making decisions about where they were going to place their new outlets or have their sales management or whatever.

If you look at it that way, then you realize that you can't have a systemic financial accountability requirement and that the board of directors should be the ones who are required to operate, which they should anyway just based under corporate law, in a financially responsible and accountable manner. But it has to be said even more clearly for some reason in this, and so we will be bringing forth an amendment that does say it at the request of the business community.

But I don't think that it would serve any purpose and it is certainly not enforceable to have "financially responsible and accountable manner" as listed in this PC motion covering all of that, and as I've already stated, it is not a legal duty as it appears here.

Mr Phillips: Maybe we have a fundamental disagreement then. I think what should permeate all organizations, including workers' compensation, is that we have to operate in a financially responsible manner. That's everybody, not just the board of directors; it's the whole organization. That's not right-wing, left-wing; it's not hardhearted conservatism; it's just reality.

You see what's happened to insurance companies. Two years ago no one would have ever even dreamed that some insurance companies would be in difficulty and now they're in difficulty. So it seems to me that maybe we just have a fundamental disagreement, and of course in fundamental disagreements you have the votes and the opposition doesn't.

I see absolutely nothing wrong with every individual in workers' comp feeling that part of our responsibility is to manage our expenditures well. I firmly believe it's in the long-term best interests of every injured worker in this province because all of us look down the road at the resources available and they're limited. Because we have that fundamental disagreement, we're going to have difficulty persuading you that what workers' compensation should do is guide its activities on fair compensation and all those things, but in a manner that's always financially responsible and accountable.

Ms Murdock: I don't think we have a fundamental difference in everyone operating in a financially responsible manner. I don't think we do. I think we are not using the words "financial" and "responsibility" and "accountability" in the same way. If the board of directors has the responsibility to be financially accountable and responsible, as they do under the Corporations Act—they have already got that responsibility—we would be stating it very clearly otherwise in the next amendment. But they've already got that and the board of directors is required to do that. Their policies and directions to their employees are such that they're already based on financially accountable and responsible reasons for making that policy, or changing a policy or whatever. Their employees then are obliged to follow the direction of the policies that their board of directors has set.

That's how I think it permeates down through the system to have your front-line workers following the directions of the board, because that's what they're doing now. When they make a decision on a claim as to whether or not it is work-related and whether or not the worker has the injury, they're doing that on the basis of policy that has been set forth by their board of directors already.

What you're asking and what Mrs Witmer's asking in this is that all of their questions should be prefaced with, not, "Is it work-related?" not, "Does the worker have this?" but, "I'm not going to make a decision unless we can afford to pay for it." And I don't think that's the question of the front-line worker. I actually asked an employer group, during the public hearings, that very question: "Are you saying that a claims adjudicator should ask, 'Can we afford to pay for that,' instead of, 'Is this work-related?'" The employer said yes, which is just mind-boggling to me. Never in a million years will I accept that.

I think that the financial responsibility is at the head. Unfortunately, it's still a hierarchical system and so it's the board of directors that sets the policy and guidelines, based on financially, fiscally responsible decisions, and those policy guidelines and directions are sent down to the different levels through the appeal system at the board. So I don't think we're disagreeing on the fundamental financial responsibility. I think what we're seeing is: Who has that in terms of the actual dollars and cents?

Mr Arnott: Given the fact that the government members defeated our first amendment with respect to the purpose clause, which of course was the amendment that came out of the PLMAC process—I don't think the PLMAC agreement was the holy grail. But I do think that

the Premier, if we listen to him he tells us that the concept of bipartisanship is the holy grail and that's the method that should be used. That PLMAC agreement was the result of that process. I still find it very difficult to understand how the Premier could have walked away from that agreement.

But, having said that,—

Ms Murdock: He didn't.

Mr Arnott: —that amendment was defeated. Now this is the next amendment that we put forward on the purpose clause. As Mr Phillips has pointed out very eloquently—

Mr Hope: This is not a political statement.

Mr Arnott: No, what I said, Randy, earlier was I thought that the purpose clause ought to be meaningful and if it wasn't meaningful, why have a purpose clause? If it was just a political statement, it was unnecessary to include it. I didn't say a purpose clause was wrong.

But I think that this is a good motion in the sense that it puts financial responsibility throughout the system, and we talked about that earlier in terms of the need for that to be implicit in all the operations of the board and something that I'd like to see.

1600

You mentioned that the adjudicators would have difficulty with that concept. I don't think really that's valid. I think most adjudicators could look at the financial outlook of the board. The unfunded liability is fairly straightforward financial information. Every day we're going \$1 million higher on the unfunded liability. That's what's happening: \$1 million a day higher. That's pretty straightforward. I would think that every adjudicator could conduct their decisions based on that.

Ms Murdock: I'm going to respond to that. I wasn't going to; I was going to actually stop and let us vote on this, but I have to respond to that, because I don't agree with you that the unfunded liability is that straightforward. I wish it were, but it isn't. In fact, people still think of it as debt. When you talk to the general public out there, they think of it as debt, as moneys owed, and they don't look at it as sort of like CPP, that it is assets and it takes into consideration those assets.

I think it is important and, for what we're doing in this bill, as a New Democrat, is very difficult.

Mr Arnott: I realize that.

Ms Murdock: The Friedland formula to me is anathema and I make no bones about that. I don't like it. I advocated on behalf of injured workers for the four years before I got elected. It is definitely having injured workers picking up billions and billions of dollars of cost on a system they didn't create. It was not they who caused the unfunded liability.

The \$1 million a day is why we're doing this bill, because if we don't do this bill and we wait for the royal commission, then you're right, the \$1 million will continue, until we get some kind of handle on what's happening within the board. Right now we're working on an interim basis. We have to get the governance section straightened out so that the board can start operating as

a business and start looking at its requirements and duties for fiscal responsibility. It has to look at the unfunded liability.

I think the point was made earlier about no requirement to go to zero by the year 2014. There was an employer actuary here during the public hearings who, when asked by Mr Mahoney why they felt it really necessary that you be at zero, said that in a pension plan such as this, which is an insurance plan based on pensions over time and in the future, you really didn't need to have it actually zero, but that you should have at least 60%, 65% coverage, or 60% I think was what he said would be adequate. You've even got employer actuaries saying that. So to go to 2014 with the unfunded liability and have it at \$13 billion—I disagree with your \$15 billion. I actually think truthfully that the return-to-work sections—because again I'm stating that you can't look at all of these things in isolation, you can't cost them out but they're going to save millions of dollars.

I know in Ottawa when we went to the presenters, I went out in the hall and talked to the transportation group that appeared before us. One of the vice-presidents from Canadian National, I think it was—yes, because Canadian Pacific came here to Toronto—stated that there are unbelievable savings on modified work programs and early-return-to-work programs. Of course there's no cost to workers' compensation, you see, because if the worker goes back to work, then there are no benefits being paid out by the Workers' Compensation Board. There is no lost-time accident which then affects their premium for the next year. So the savings are there in millions and millions of dollars. I think we are going to see that, once return-to-work is in place and people are actually utilizing it. But you can't cost it out. When they ask us to cost that, we can't do it, because each company is going to be different. NEER explains a lot of that.

In any case, what I'm saying is that the unfunded liability is not a straightforward issue, nor should we be asking our claims adjudicators or those people on the front line to be looking at a \$1-billion question when they're looking at Joe or Sally Smith who has been injured on the job and their wages are \$400 or \$500 a week and they're going to get 90% of net. I think that's what the claims adjudicator is deciding: Is this work-related? Is the worker injured? That's the issue, that the claims adjudicator has to do it, following the guidelines that the board sets forth.

Mrs Joan M. Fawcett (Northumberland): Just briefly, I'm really interested in the arguments that the parliamentary assistant is using around this whole financially responsible and accountable manner that, depending on where it's situated in the whole clause, seems to give her a problem. I noticed that in one statement she said, "Do you think we would take the PLMAC and just stamp approval on that?"

All right, but it was a group brought together by the Premier for the purposes of advising. I have a question as to why then, when your original purpose clause came forward, it was really slanted on just the one side. I also would say to Mr Hope, who keeps accusing the Conservatives of these political statements, to me your original

purpose clause smacks slightly of a political statement slanted to one side.

If I go back to this letter of the Premier's—you keep holding out your new amendment that you're going to put forward that "financially responsible and accountable manner in governing the board," but the Premier in his letter said, "A 'purpose clause' will be added to the Workers' Compensation Act which will ensure that the WCB provides its services in a context of financial responsibility." Why didn't you put that in your amended purpose clause then? Why didn't you spell that out the way he did? This is your Premier.

Ms Murdock: You can't do it both ways here. The PLMAC agreement is "to require the board of directors to exercise the highest level of financial responsibility and accountability in administering the workers' compensation system in Ontario." You get into drafting problems with "highest level" and what is the highest level and how does one determine that and so on. You have to be careful in terms of the wording that is used legislatively.

Having said that, I've already stated fairly clearly, I think, and I'm not going to get into it again, the reasons why I don't even think it should be in a purpose clause. But in any case—

Mrs Fawcett: But then nothing else should be in the purpose clause either.

Ms Murdock: No, and I'm going to speak to that. The people who were sitting at the PLMAC—

Mrs Fawcett: That's your line of thought.

Ms Murdock: —the employers and organized labour who are sitting at the table, are not legislative drafters.

Mrs Fawcett: Oh, of course they're not. I understand that.

Ms Murdock: Nor could you expect the Premier—or the Minister of Labour, or whatever, wherever it's being done, where anything is being negotiated on a bipartite basis could you take—to take that and just holus-bolus stamp it as the legislation. It can't be done.

Mrs Fawcett: Well, I guess I wonder why you could holus-bolus just leave out the financial responsibility.

Ms Murdock: But we didn't leave it out. You see—

Mrs Fawcett: You did.

Ms Murdock: No. I disagree with you entirely, because—and I've explained this, but I'll explain it again—we never left it out of the act. The people at the PLMAC were all sitting around discussing what is the Workers' Compensation Act there for and discussing all of what they saw as the purposes of the act, given that the purposes I think are fairly important in terms of setting the tone and what is it there for: It is there to protect workers. That's our basic premise: It is there to protect the workers who get injured on the job.

Mrs Fawcett: Of course.

Ms Murdock: Okay. That's the what the purpose clause in our initial Bill 165 stated: to provide fair compensation to workers who sustain personal injury, health care benefits to those workers, rehab services and programs to facilitate those workers' return to work, rehab programs for their survivors—

Mrs Fawcett: But it's doing all of that, according—when my colleague was saying—

Ms Murdock: I'm not finished.

Mrs Fawcett: —everything is to be done in a financially responsible manner.

1610

Ms Murdock: Responsible manner. The thing is, what I explained earlier—and I know Mr Offer was here when I gave this explanation, and the legislative counsel also gave an explanation of the legal import of having it in the purpose clause as compared to having it in a separate legislative obligation of the board of directors. It's very important. All of the members of this committee were given this chart, and it's dated August 26. When you look at the purposes of this act under the PLMAC framework and you look under the Bill 165, all sections of that are in the bill.

I know that much has been made of the fact that it wasn't all put in the purpose clause, but again I come to the point where, if you want it to have any kind of enforceability, all of those parts cannot appear in the purpose clause. Well, you can put them all in there, but then you weaken the importance of the things that you want to be important, and it is only referred to whenever you have a problem in interpretation. Then you go to the purpose clause.

I don't think that was the intent of the PLMAC. The PLMAC's intent was to have a bill written up that would cover all of those things. They in their minds put it as purposes, but in reality if they wanted it to work, it had to appear in different places. I don't know how to say it any other way.

The Vice-Chair: Further discussion on Mrs Witmer's motion? Mr Hope.

Mr Hope: I wasn't going to say anything till Mr Arnott—

Mr Arnott: Don't.

Mr Hope: But I wanted to make a comment, and when you read this amendment that's being put forward, it says, "The purposes of this act are to provide, in a financially responsible and accountable manner," so when a person, whom we always bestow this responsibility on, reads it and says, "fair compensation to workers who sustain personal injury arising out of and in the course of their employment or who suffer from occupational disease and to their survivors and dependants,"—which means that the person would say "financial compensation." Then they'd raise the question "financially responsible and accountable manner," and they're going to start to pre-determine that X person will receive x amount of dollars and Y person will receive y amount of money. It leaves too much interpretation.

"Health care benefits to those workers": The question would be asked, "Is it financially responsible to provide health care benefits to the person?" It doesn't put any obligation in this amendment that's being put forward to provide those services. It says to do an analysis whether they're eligible and then to balance it off with financial accountability.

This amendment, again, and I guess I would ask Mr

Arnott, is this one the political statement or is the first amendment the political statement? But all I see in this whole analysis is it leaves too much interpretation to actually deal with what workers' compensation was intended to do, and it's to provide services to people who are injured in a workplace, and I think it's important that the act clearly reflect that.

The business community, I repeat once again, came front and centre to this committee a number of times and would not accept it in section 58 of the bill. They wanted it in the purpose clause. We've now bestowed—the amendment which we'll hopefully deal with next is ours—their request there and to make sure that the requirements of the board financially are there.

This amendment, all I see it does is leave too much discretion to question, first, the eligibility and then, after eligibility, can we financially afford it. It just places too much of an onus on those who are affected by being injured in a workplace, whether they will be fairly compensated, whether they will receive adequate health care, whether they will receive rehabilitation services, and will they receive rehabilitation programs for their survivors.

We all listened to the history, in every presentation that pretty well came forward, of why this act was established and the purpose of the act, and we all said it was great in 1914 why they did what they did and why it was put into place. But I believe that if we were to support this amendment, we'd be taking totally away from the intent which was first brought forward, why we established this act and the workers gave up their right to sue and we

went to a compensation system that would adequately deal with those injured workers.

Mr Ferguson: Mr Chair, just before you call for the vote, I'm wondering, given that the clock is ticking, if it would not be an appropriate time to adjourn, given some of the events that are taking place in the building this evening.

Mr Klopp: Well, let's call a vote on it.

Mr Ferguson: No, we're meeting—

The Vice-Chair: I believe we're close enough to the vote and I have no more speakers on the list on this motion.

Mr Arnott: I just want to answer briefly Mr Hope's question. I understood he asked which of the two amendments we put forward on the purpose clause is a political statement. Well, I would answer that both of them would be, in my opinion, meaningful purpose clauses which would impact on the whole bill and that's why I think they're good. The first one, I think, would be my preference if I had to choose between the two because it came out of the PLMAC process, but it having been defeated, we would submit this amendment for the committee's consideration and would hope that we do get the support of the government members.

The Vice-Chair: Seeing no further speakers on this motion, all those in favour of the motion by Mrs Witmer? Opposed? Defeated.

Seeing the hour, this committee stands adjourned until 10 am tomorrow morning.

The committee adjourned at 1616.

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Waters, Daniel (Muskoka-Georgian Bay ND)

***Wood, Len** (Cochrane North/-Nord ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Arnott, Ted (Wellington PC) for Mr Jordan

Duignan, Noel (Halton North/-Nord ND) for Mr Huget

Hope, Randy R. (Chatham-Kent ND) for Mr Waters

Phillips, Gerry (Scarborough-Agincourt L) for Mr Conway

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Turnbull

Also taking part / Autres participants et participantes:

Ministry of Labour:

Murdock, Sharon, parliamentary assistant to the minister

Toker, Mitchell, manager, workers' compensation board

Clerk / Greffière: Manikel, Tannis

Staff / Personnel: Spakowski, Mark, legislative counsel

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Third Session, 35th Parliament

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Troisième session, 35^e législature

Official Report of Debates (Hansard)

Wednesday 28 September 1994

Journal des débats (Hansard)

Mercredi 28 septembre 1994

Standing committee on resources development

Workers' Compensation and
Occupational Health and Safety
Amendment Act, 1994

Comité permanent du développement des ressources

Loi de 1994 modifiant la Loi
sur les accidents du travail et la Loi
sur la santé et la sécurité au travail

Vice-Chair: Mike Cooper
Clerk: Tannis Manikel



Vice-Président : Mike Cooper
Greffière : Tannis Manikel

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Wednesday 28 September 1994

Mercredi 28 septembre 1994

*The committee met at 1021 in committee room 1.*WORKERS' COMPENSATION
AND OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL
ET LA LOI SUR LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

The Vice-Chair (Mr Mike Cooper): We are continuing on our clause-by-clause on Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act. We're on a Liberal motion now.

Mr Steven W. Mahoney (Mississauga West): Mr Chairman, could you indulge me and tell me what happened with MS-2, the government motion?

Ms Sharon Murdock (Sudbury): We didn't do it.

The Vice-Chair: We're doing yours first.

Mr Mahoney: You're doing mine first.

The Vice-Chair: And then we'll go to the government motion.

Mr Mahoney: I see. So you want to kill mine and then you'll go to the one you're intending on passing.

The Vice-Chair: Well, with your oratorical skills, I'm sure you can convince members otherwise.

Mr Mahoney: Do you think I can convince some of you? I actually can be fairly succinct, believe it or not, on this one. I've analysed the differences between—

The Vice-Chair: Could you please move the motion first?

Mr Mahoney: Yes. I move that section 0.1 of the Workers' Compensation Act, as set out in section 1 of the bill, be amended by adding the following subsection:

"Financial responsibility

"(2) The board shall conduct itself in a financially responsible and accountable manner in fulfilling the purposes of this act."

If you will note the fact that we don't have the government motion on the floor, I want to make one comparison, as there apparently is only one difference. My motion reads at the tail end, "in fulfilling the purposes of this act." The government motion reads "in governing the board." Other than that, they're virtually the same.

The concern that I have, and has been expressed to me

by a number of people particularly in the business community, is that there's a little bit of a trick afoot here, I'd say to the parliamentary assistant, in that using the term "governing the board" does not take into account WCAT, for one example, and possibly other agencies that will drive the costs of the board.

We've all heard many examples of WCAT making a decision on an appeal that doesn't relate to the policies the Workers' Compensation Board itself has passed, and in fact it's been accused of being a policy-setting agency. So the concern here is that if you strictly limit this to the board itself as opposed to the purposes of the entire act, then you're exempting WCAT from having to act in a responsible manner. I would hope that's not the intent of the government motion and would hope that the government could adhere to the request of many people who came before this committee who referred to the purpose clause as being the actual instrument that would set out the purposes of the act.

We believe that the purposes of the act are numerous and we actually agree in our caucus with the purpose being primarily to deal with benefits, return to work, health and safety—all of those issues around resolving the plight of the injured worker and getting them back to work. We support that as a fundamental principle. We just think also that it's extremely important that the purpose of the act include financial responsibility and accountability, and apparently the government does too, but I don't think you're going far enough and you're leaving this open to abuse, particularly by WCAT but perhaps by others.

If the government is prepared to amend its motion to replace the words "in governing the board" with the words "in fulfilling the purposes of this act," I would be happy to withdraw my motion and support the government motion in its place. I would ask the parliamentary assistant if she could respond to that request.

Ms Murdock: I wasn't even looking at that part in going to address your motion. Your motion actually has another difference that I think is even more problematic for us, because by saying "the board," and if you look at ours it says "board of directors," yours becomes a systemic motion instead of an obligation and duty of the board of directors, number one. That was one of our main reasons for not supporting yours.

Secondly, yesterday Mr Offer stated, I thought, quite eloquently the concerns about WCAT and its relationship with the board of directors, but I would point out to you that the PLMAC never discussed WCAT. I would also say that the whole reason that WCAT was instituted in

the first place as an outside mechanism of adjudication is it's quasi-judicial; it's similar to a court system; you would want an outside body making the decisions. There's nothing in the act that precludes the WCAT from making decisions beyond the scope and policy that the board of directors has given. That's why you have an outside adjudication system.

I would say that it was never the intent of this government in preparing Bill 165 to have Bill 165 address the WCAT issue, and that that whole thing will be looked at by the royal commission.

Mr Mahoney: First of all, WCAT may be in its intent quasi-judicial, but in reality it's not. The people who infiltrate into the process, including MPPs, would not do such a thing if it were indeed quasi-judicial. You would not go on behalf of a constituent to court to fight a parking ticket as an MPP, but clearly MPPs intervene and act on behalf of constituents in the appeal process into WCAT and other levels. So I just totally reject the fact that it is quasi-judicial in its activity, in its actions, and in the way that it performs.

I also believe very strongly, and your response would lead me to no other conclusion than to believe, that you are intentionally excluding them by simply referring to "the board" as opposed to "the purposes of this act."

The comment that my motion is in some way systemic, I'm afraid I just don't understand what you're referring to. We are simply asking that the board, when acting in relationship to this act and the purposes for which this act is being put in place, conduct itself in a financially responsible and accountable manner.

When I first looked at this I wondered, am I being a little too picky, am I splitting hairs on this thing, because you do say in your motion, "to require the board of directors of the Workers' Compensation Board to act in a financially responsible...manner in governing the board." I really did think carefully about whether or not I was splitting hairs, but you specifically zero in on the board of directors only as opposed to the workers' compensation system. And if you want to talk about systemic, we're talking about the entire system and everything that impacts upon an injured worker, upon an appeal, upon an adjudication, upon every aspect of the workers' compensation system.

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If you really do want to reform the system and not just play games with regard to financial responsibility and accountability, I would strongly suggest that you have to go further and say that the entire workers' compensation system must be dealt with in regard to the purposes of this act in a responsible and accountable manner.

Interjections.

There's so much going on, I doubt that anyone in the government side, not on the committee but in the—*the* parliamentary assistant is getting some kind of advice.

Ms Murdock: I can't get the advice and listen to you at the same time?

Mr Mahoney: Well, I guess you do have two ears so I guess you can do that.

I think you've come some distance and I appreciate

that, but I just don't think that you've gone to the point where you're going to effect the kind of change that we need.

In the letter that got some attention by myself and others, dated April 21, from Premier Bob Rae to Jim Yarrow, he says, and I quote, "A 'purpose clause' will be added to the Workers' Compensation Act which will ensure that the WCB provides its services"—that's the key—"in a context of financial responsibility." These are Premier Bob Rae's words.

The amendment deals with the services, not just a group of men and women sitting around a board table deciding on whether or not they're going to act in a financially responsible way. They can do it. If the board acts according to your amendment, in a financially responsible way, and WCAT decides to disagree with the board—we've seen countless examples where the WCAT ruling will stand and the only appeal then would be for the employer, perhaps, to go to the courts. We really think very strongly that this has to relate to all services within the purposes of this act that are being provided by the Workers' Compensation Board.

I once again ask the parliamentary assistant to consider, at the very least, putting in the words "in fulfilling the purposes of this act," which would then cover all services referred to on April 21, 1994, by Premier Bob Rae in his letter.

Ms Murdock: I guess the first answer is no, I won't consider that.

Mr Mahoney: Then don't bother with the second answer.

Ms Murdock: The second answer is, I don't know why you would think that that would cover WCAT and I would like to have you explain to me how the way you've got yours worded would have anything to do with the operation and the decision-making provisions that WCAT has, when it was intentionally put out there as a separate, objective mechanism of appeal.

Mr Mahoney: If I was asked a question, I would tell you that what our motion does is deals with the purposes of the act. That's what we're here doing today. We're dealing with a particular bill and we're dealing with the purpose clause of the bill, which states how everything that's involved around that bill will be interpreted, administered and carried out. By referring directly to the purposes of the act, you're acknowledging—when you go further on into the act—maybe I should do that and this would help the parliamentary assistant.

When you go further on into the act, which is what I'm here to do, there are a number of areas where it would be consistent; for example, clause 15(3.1)(a) where it reads, "so that generally accepted advances in health sciences and related disciplines are reflected in benefits, services, programs and policies in a way that is consistent with the purposes of this act." And it goes on in (3.2) to say, "The board shall evaluate the consequences of any proposed change in benefits, services, programs and policies to ensure that the purposes of this act are achieved."

There's some consistency within the body of the bill.

It continually refers to the purposes of this act. So in putting an amendment to deal with the financial responsibility, why would you not refer to the purposes of the act?

In the section that deals generally—I'm looking for it—subsection 58(1), where it says, "The board of directors shall act in a financially responsible and accountable manner in exercising its powers and performing its duties," if you said there, "the following as outlined in the purpose clause," then that section, which deals with financial accountability, would be consistent, as one of the purposes of the act, with the others. So you would accept the fact that the purposes are to provide fair compensation, to provide health care benefits, to provide rehab services, to provide rehab programs for survivors and to act in a financially responsible and accountable manner in relationship to all of those purposes of this act.

There's no consistency here, to the parliamentary assistant. Subsection 58(1) leaves it out. Certainly the sections that deal with voc rehab, the sections that I referred to that deal with health sciences and related disciplines, the section that deals with changes in benefits, services and programs: All of those sections refer to the purposes of the act, and yet you put in place an amendment attempting to look like you're agreeing with the business concerns in relationship to financial responsibility and accountability, and you leave out the purposes of the act.

Quite clearly our amendment includes that, makes it consistent with the rest of your bill, particularly the areas in relationship to health care benefits and changes in health sciences and those items that are referred to directly in this bill. Our amendment is very, very consistent with that.

Perhaps the parliamentary assistant would consider or should consider some kind of compromise in this where we could use the first part of your bill, which requires the board to act in relationship to the purposes of the act at least, but my preference would be that we deal with "conduct in a financially and responsible and accountable manner," and refer specifically and directly to the purposes of the act, which then ties in to benefits and other issues.

I might add just one brief comment. This could backfire on the business community and I'm not sure they thought that out in putting it here, but the old "what's good for the goose is good for the gander" routine applies here. It could backfire in that the board may decide that they indeed want to increase benefits, either in percentage terms or in issues that would be compensable, be it stress or be it whatever else, and then they could decide that the only way to increase that and be financially responsible and accountable is to increase rates. That clearly is a danger that I'm not sure the business community has thought out entirely, but frankly if that's the ultimate decision of the board, and they're empowered properly and they're acting within the confines of the purposes of this bill and the purposes of the act, then so be it. The business community can have a press conference and express its frustration and concern, because what this doesn't do that many people asked for from the business community is include a clause referring to the competitiveness of Ontario businesses.

Neither my amendment nor the government amendment goes to that extreme. We could have done that. We could have said, "act in a financially responsible and accountable manner, taking into account competitiveness of Ontario businesses," which would have directly referred to rates, but we didn't do that, because frankly, we've got to get this board into a position where they're able and capable of making a decision based on the purposes of the act around fairness to injured workers and around financial responsibility and accountability. If at the end of the day that leads to a decision that would increase rates, then the business community has got to accept the fact or understand the fact that they're acting in a financially responsible way.

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If you think of an example of Ontario Hydro, if Ontario Hydro provides service on a cost-pass-through basis and it provides services to a particular area, it must pass those costs through in terms of rates. The same thing could be true, and should be true at the end of the day, as long as they're dealing with fair, compensable injuries and issues and not going way outside of their mandate, way outside of the purposes of the Workers' Compensation Act and way outside of amendments such as Bills 81, 162 or 165.

I just simply plead with the government to make this bill consistent, to make the direction to the board—which is ultimately what our responsibility is. We can pretend we are arm's length, but we pass the legislation around here and we're the ones who ultimately, through the words in the legislation, will direct the board how it should be acting. We're saying, "Be responsible and be accountable when you are interpreting the purposes of this bill." You're not saying that at all and you're leaving other agencies out to make their own decisions.

Ms Murdock: We'll get into the interpretation of our section, but I disagree with you. Financial accountability and responsibility should be on the board of directors, and yours doesn't say that. I think our difference—

Mr Mahoney: I beg to differ with that last comment. I'm sorry to interrupt you, but you say mine doesn't say that. Mine specifically refers to, "The board shall conduct itself." How can you say that that's not on the board?

Ms Murdock: "The board" is not the same as the board of directors, at least not the way it's used throughout the act, if you're talking in terms of consistency. The board of directors is the one that has the duty. "The board" is the system of the whole place, the corporation.

Mr Mahoney: Well, if that is your argument, the interpretation could be that the wording should be, "The board of directors shall conduct itself in a financially responsible and accountable manner in fulfilling the purposes of this act." If that's an acceptable amendment to the motion and your interpretation, I'm more than happy to do that, but the concern is around the purposes of this act and the fact that we want to talk about the entire picture. The reason it's "the board" is because it's the WCB and all of the services that are inherent within that board.

Ms Murdock: I explained yesterday—but I'll do it

again—that the question of having things filter down to the different levels throughout the entire system comes to the question in terms of this financial responsibility and accountability of whether or not a claims adjudicator, for instance, should have some awareness of whatever the board of directors has sent as a directive or a policy guideline or whatever, in terms of should have some idea maybe of where they are financially, but it should not be a determinant by the claims adjudicator on whatever case comes before them.

I don't think that's their function. That's not their purpose. They are there to adjudicate a claim and determine whether or not the accident did occur, whether or not the injury does exist and whether or not it's work-related; and that's their job. But it is not their job, in my view, nor at the different levels throughout, to determine: Can the board afford to pay for this injury? That is not. That's why I'm saying, no, I don't think that that should be one of the criteria used by the people within the system, but that the board of directors has a responsibility to be financially accountable and responsible and that it sets policy and guidelines that would direct those people within the system to act in a manner that it determines to be financially responsible and accountable.

Mr Mahoney: I clearly understand that we would not want or expect an adjudicator or a WCB doctor or someone working within the system to say: "I can't approve this claim because it's not financially responsible. I can't allow this treatment to take place because it's not financially responsible."

What we're talking about here is leadership. The leadership ultimately has to come from the board of directors in setting the policy. It would seem to me that if you look at the process, an injured worker comes in and meets with the adjudicator and goes through the process. The adjudicator approves the claim and it starts filtering through or at some point they turn it down and it goes through the appeals process.

The really serious concern—and we've heard this expressed by injured workers as well, because decisions go both ways on this stuff—is that there is no direct tie-in between an agency such as WCAT and the board in the sense that WCAT seems to have the ability to make its own decisions irrespective of board policy. We think that if you were to include the board as the broader board, that would cover WCAT and a subsequent decision by a court would uphold under the legislation the fact that they are part of the greater board and they've made a decision that is not financially responsible or accountable and overturn that decision.

How that is going to work through the process I admit will take some time, will take some test cases, but clearly that will put in place legislation directed by the legislators that will give direction for the courts to interpret it in that broader way. Under this, the court would look at this and say: "Well, the amendment says to require the board of directors to be responsible. This isn't the board of directors. The board of directors made their decision. They turned it down. They were responsible within the confines of making their decision. They said no."

Another agency that is not under the constraints of this

act, because they're not mentioned, has overturned the board's decision without even taking into account financial responsibility. I can't believe that any government wants to restrict their, let's call it, A team and allow the B team to override the A team. It just makes no sense whatsoever.

You and I can play games and fight over words, but somehow I'd like to see an amendment here. If it's not mine and not yours, maybe it should be a new one that would ensure that the board of directors, and all related agencies governed by this act, act in a financially responsible and accountable manner in relationship to the purposes of the act. If we were to say that, then WCAT could and must adhere to the same policies of the board. That would not mean, with respect, that WCAT could not disagree with the board. WCAT could indeed overturn a decision that was turned down but would have to look at the financial impact, be responsible and accountable under the act if we indeed expanded it to include all agencies.

I hear what you're saying in relationship to the staff. I quite agree that I would not expect an adjudicator or a front-line worker in the system to make a decision based on whether or not the money was in the system. I highly doubt that they would even have the slightest idea whether or not it was. They've got to make their decision based on the information in front of them, which is the injury, the file, the accident occurrence etc. But once it gets past that stage, there are professionals who are involved in this in the appeal process who are being let off the hook.

I again reiterate: You're hamstringing the A team to some kind of financial responsibility and leaving the B team off the hook. I think it's a serious, serious mistake.

Ms Murdock: Two things: I'm going to go back to the PLMAC agreement when the employers had their press conference and made the presentation of what was in the agreement. The last page of theirs was a chart of how they thought the board should be set up. In that chart, WCAT was specifically—it was one of the groups that deals with issues relating to workers' compensation on the bottom of the page—left out of the loop of reporting to the CEO in their own chart. That's number one.

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Number two is, Bill 165 does not address any of those agencies and specifically WCAT. It was never our intent to have it do that. In my view, it shouldn't. The fact that WCAT is its own separate legal entity was meant in 1985 to give it the right to make decisions that went beyond, if necessary in specific cases, the policy of the board if it had to.

The whole point of having a separate adjudication system was so that when you went through the three different levels within the board and you still didn't like the decision you had another appeal mechanism and that they, not being under the board, would be able to make an objective decision, and they have done that. So the royal commission will look at that, not Bill 165.

Mr Mahoney: Would the parliamentary assistant

answer me one question? Do you consider WCAT as part of WCB services?

Ms Murdock: Personally? No.

Mr Mahoney: Is there another way you would answer that other than personally?

Ms Murdock: Having worked as an advocate prior to being elected, I would say that we relied on the fact that WCAT was outside the workers' compensation system. That's why it was instituted and that's what you used it for. It was not part of the services provided by the board. Yes, their budget is approved by the board of directors, but once they have that budget they can use it in whatever way they see fit and they are an independent appeals tribunal. That was what they were put in place for, because it was felt at that time, and we weren't the government of the day, that it was almost incestuous within the board in terms of the decision-making at the three different levels and that an independent body was required. So WCAT was instituted.

If you wanted now to have requirements that the board of directors control the policy and the direction of the WCAT, then you have removed that independence, and I'm not prepared to do that, nor does Bill 165 purport to do that, and never was our intent to proceed along those lines.

Mr Mahoney: The parliamentary assistant is a lawyer, I understand.

Ms Murdock: Well, I never practised. But, yes, I did get called to the bar.

Mr Mahoney: You have training in the law.

Ms Murdock: Yes.

Mr Mahoney: I don't. But I just want to understand; maybe you can help me. In an independent decision-making role of some law, be it Workers' Compensation Board policy interpreted by what you refer to as a quasi-judicial body, compare that to the court system. If a judge sitting at the bench is to hear a case and the prosecuting attorney will make an argument against the individual charged, whatever the crime is, it could be a parking ticket or it could be O.J. Simpson, whatever it happens to be, is the court at all empowered, the judge, to make new law virtually by the seat of his pants in interpreting the laws of the land?

Ms Murdock: Yes. Obviously they look at precedent, but in law school days you looked at different cases. They moved from a point beyond because some judge in his or her—well, his, in those days—determination would say that the law was too restrictive and move it a little. So it has moved. The law's not static. So I would say that, yes, judges can do that. But I'm glad you raised that as an example because a judge also makes the decision, whatever the award or the judgement is, with nothing in mind as to whether or not the defendant can afford to pay for it. He makes the decision in a civil suit, for instance, and gives the decision and makes the award, and he doesn't care whether or not they can pay for it.

Mr Mahoney: You know what? I don't have law training, but I rest my case almost. That's the problem. You just hit it right on the head. WCAT, with your amendment, will be empowered to make a decision

without caring about or taking into account the impact on anybody. They will be empowered to totally ignore board policy and direction and write a whole new policy right by the seat of their pants. I don't think there's any judge that I've seen in our country and our province who's going to totally ignore the law and create a new one. They may say, "This law is restrictive in this case because of extenuating circumstances," or something of that nature and give it some flexibility. That's not what we're concerned about.

What we cannot have is a board of directors administering this act, and several amendments to that act such as Bill 165 and others, and running this system—we're really putting them in a terrible position, because the board of directors are the ones who are going to have to pass on the costs that could be directly attributed to a WCAT decision, with no accountability, no culpability on the part of the WCAT decision-makers. Why would you do that to the board of directors of this system? Do we really want to reform the system or are we just playing games here?

Ms Murdock: I know what you're saying and you know what I'm saying, but the bottom line here is that WCAT, at least not in my experience, and it's really a very young agency, has never really gone off the wall in terms of making its decisions. It's always done it, I thought, fairly reasonably. Yes, it's gone beyond the scope of some of the policies of the board, and I use chronic pain as an example, which the board under section 93 reviewed and so on, but the point is it made a decision that the board of directors had not set policy for. That's part of the role of WCAT.

I know the great fear, and we discussed this yesterday, is that WCAT is going to make some monumental decision on stress. The employer groups are just shaking in their boots, because if stress is recognized, does that mean that if you can't cope with your workload, you suddenly get off and you get workers' compensation? I know that's the fear of the employer community. But Bill 165 does not address WCAT. It never was our intent to address WCAT, nor do I think the board of directors should have any right to control WCAT decisions and where it goes on policy.

Mr Mahoney: Could I perhaps take another tack on this? This relates directly to this amendment, because it relates to financial accountability and responsibility. Subsection 15(3.2), at the top of page 5 of this bill, says, under "Evaluation of proposed changes," "The board shall evaluate the consequences of any proposed changes in benefits, services, programs and policies to ensure that the purposes of this act are achieved." Does that give the board, in your opinion, the ability to declare stress compensable?

Ms Murdock: The board can do that if it wishes.

Mr Mahoney: You brought up the stress issue at WCAT. If the board is required to act in a financially responsible and accountable manner and it interprets subsection (3.2) of this bill, then it's hard to imagine that they could include stress without at the very least doing a financial impact study and coming up with a decision on whether or not it was affordable and whether or not

they had to perhaps increase rates or change other services or find money within the system. If you add financial responsibility into the purpose clause, then it should—in theory, particularly if you accept our wording of the purposes of the act as opposed to just governing the board, but I'm willing to accept that may be a moot point—cover that particular point.

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There will be a requirement on the board to do some financial studying. There is no requirement on any other agency—and we're zeroing in on the obvious one of WCAT—that might decide to empower itself in a hearing and include stress without even giving the board an opportunity to analyse the financial impact.

Should there not be some requirement to let, as I call them, the A-team, the board of directors, have an opportunity to live up to their responsibilities in determining the financial responsibility and accountability? I'm not asking you to even directly mention WCAT in this bill; I'm suggesting we should be looking at some wording that will give at least the courts an opportunity, in a subsequent court decision, to determine that the bill meant more than just the men and women who sit around the boardroom table; it meant the system. We could probably argue for days whether or not WCAT was part of the system, but your own Premier refers to the WCB providing "its services in a context of financial responsibility." How we can determine that an appeal process within the WCB is not part of its total service package is clearly beyond any kind of logic. It is part of the total service package. The courts are not.

I would refer you to the document that I love to refer to in Back to the Future and our recommendation that WCAT be set up with its own legislation, totally separate, as a quasi-judicial body, which would be aka a court. If it were indeed set up entirely with its own legislation and governing itself as opposed to part of the services of the WCB, then I might accept your argument, but it's not. It's set up as part of the appeal process.

You're just arbitrarily drawing a line and saying, "I'm going to move WCAT out of the overall services that the WCB provides." That is arbitrary and without any kind of justification or basis in law that I can see that you could make such an arbitrary—not you personally, the government—decision. It is part of the service package. Ask an injured worker, ask an advocate who works for injured workers, and they will tell you that the light at the end of the tunnel for them is WCAT and they want to get there as quickly as they possibly can. They consider it part of the entire envelope, part of the WCB service package that your own Premier refers to in his letter to Jim Yarrow in this regard.

I'm really pleading with the government, don't set this up—somebody in the future's going to have to fix this. You may think it's going to be you, we may think it's going to be us and my friends here may think it's going to be them. It doesn't matter; somebody's going to have to fix this. This is not a partisan issue. This is an issue that goes to the very root of financial accountability in the system that deals with injured workers and affordability for the people who pay the bills, and you're

leaving a loophole large enough to drive a Mack truck through by allowing these people to make decisions without any accountability or responsibility for their financial positions.

I just don't understand why you can't see that. I'd be prepared to sit down and come up with a compromise amendment that would indeed include, simply by saying, "The board of directors of the Workers' Compensation Board and other agencies"—we could say "funded by," we could say, "who have a relationship to," "who are part of the service package," we could say it in any number of ways that legal counsel might be willing to draft, but we could clearly send a message that we're not going to allow the B team to override the A team.

Ms Murdock: Well, I've stated it. We're obviously going to agree to disagree. The Tories in 1984, this was a bill setting up WCAT, and though I wasn't here at the time, the legislators of that day sat down and said, "This entity should be separate, independent, outside of the board," and that's the way they set it up.

Mr Mahoney: Then they put them on the board.

Ms Murdock: No. They said that—yes, they put it, because obviously, and I think that's fair, that the director of WCAT should have some idea as to the direction and policy guidelines direction of the board of directors. That makes sense. He has no vote, has no right to make a decision regarding within the board of directors, but has an idea of where the board is going and can then use that knowledge within his own operation.

Mr Mahoney: And also has the decision-making power to ignore that board policy and to make a decision entirely on his or her own without any tie-in or responsibility to the entire service package. I guess the fundamental place where we disagree is that you see WCAT as being set up as a totally separate entity; a court, a judge. You would not dream of having a judge who is hearing a case sit in on a legislative committee that was making law that could affect his or her decision on that particular case. That's absurd.

Ms Murdock: Just as a judge does not make up new law at the snap of a finger, neither does WCAT. WCAT doesn't. It is to look at policy direction. It makes interpretations as to whether the specifics of a particular case fall within those, whether or not it should go beyond that or how it should go beyond that if it makes that decision. WCAT sets precedents. They send out pamphlets with all of the decisions that come out on it so that advocates on either side can look at the previous WCAT decisions and utilize them in the next case that they advocate on behalf of.

But you make it sound like WCAT sits down and says: "Well, we don't give a damn about what the WCB does. We're just going to make up this new coverage whether they like it or not." I don't think that happens. They do not make decisions out of thin air. They utilize what the board policy is and then a panel of three determines whether or not they think it should go a little bit further, and that's exactly what our court system does. So I don't know—

Mr Mahoney: What you're going—

Ms Murdock: We're disagreeing and we're going to continue to disagree on the role of WCAT and how it operates. But I'll reiterate: Bill 165 does not address that issue, so in that respect you are absolutely correct.

Mr Mahoney: If the fears and predictions are correct, by leaving any reference, and it doesn't even have to be a specific reference, with regard to financial responsibility and accountability to other agencies that impact on the board, if you think of this as who drives the costs, what we're getting at in financial responsibility is costs. What is the system costing? Who drives the cost? I maintain that you and I drive the cost; that obviously injured workers drive the cost initially by filing a claim, and that's what the system is there for, but then there are other people who drive it. There are lawyers who drive the costs; there's a whole industry out there of advocates. We've seen them. We've seen them in our committee hearings, all hovering around, very curious as to the final outcome of all of this.

There are some people who make some pretty fine livings out of being advocates for WCB, and that's fair game. But they drive the costs. There's absolutely no question they drive the costs. They have no responsibility, however, to be financially responsible or accountable to an act or to any kind of bill or legislation or this Legislature or this committee, nor should they. We have no power over them.

What we want is, the people who have the ability to drive the costs should act—and you would assume that was fundamentally the board of directors, you would assume that, but we know that there are other agencies which drive the cost of this and couldn't give a hoot what the board of directors say about it, or at least in some instances certainly act in that manner. I think what you've done is applied very selective interpretation to the PLMAC process, which you've done frankly throughout this entire process. Every time you get an argument that you think you can use the PLMAC—Gord Wilson in London said that this bill mirrors the PLMAC process. Well, it's one of those funny mirrors that you see at the CNE every year, that's all distorted, that makes people like me look slim. You know the kind of mirror I mean. I look in all those all the time actually, but it's one of those distorted mirrors, so you're being very selective in trying to interpret that.

Frankly, I think you're being very selective in trying to interpret your Premier's words about the services of the Workers' Compensation Act being provided in a context of financial responsibility by specifically excluding WCAT. Bear in mind that this bill will be interpreted—in many cases by the advocates and the lawyers I'm referring to who hover around the WCB issues—not only by the words that are in this bill, but by the debate that takes place at this committee and in the Ontario Legislature. I can just see them rubbing their hands with glee, saying: "What we'd better do now is bypass any internal appeals as quickly as we possibly can and get to WCAT, because the parliamentary assistant in the hearing at Queen's Park on the interpretation of Bill 165 has clearly stated that WCAT has no financial responsibility or accountability. Therefore, we're going to get a decision

out of them that will be much better for our clients."

I'm telling you, that's what I'd be doing if I were one of those people. If I were representing one of the injured workers and trying to get a decision, I'd be hauling out the Hansard and I'd be pulling it in to WCAT as evidence and saying: "You have no responsibility to be financially accountable. It's right here in Hansard. Sharon Murdock said it. Therefore, we want you to ignore the financial side of this issue and we want you to make a decision simply and solely based on—" A, B or C, or whatever it is.

Again, it's a loophole big enough for a Mack truck. You're setting the board up and future governments up for major, catastrophic problems in relationship to the decisions. I can only assume that you are intentionally doing so because of the refusal of the government to address the agencies or, in this case, agency which has a direct impact on driving the cost of workers' compensation costs in this province.

Once again, I guess what I would ask is, at the very least—I've moved the motion—that the motion be passed. If that fails, I would ask the parliamentary assistant to consider an amendment that would at least refer to the purposes of the act, which gives us some sense of confidence that it could include all services; or, failing that, to consider an amendment that would deal with agencies that have an impact on the WCB system.

The Vice-Chair: Further discussion? Seeing no further discussion on Mr Mahoney's motion, shall the motion carry?

Mr Mahoney: Recorded vote.

The Vice-Chair: All those in favour?

Ayes

Arnott, Fawcett, Mahoney, Witmer.

The Vice-Chair: All those opposed?

Nays

Ferguson, Hope, Klopp, Murdock, Wood.

The Vice-Chair: The motion is defeated.

Ms Murdock: Could we have a 10-minute recess, Mr Chair?

The Vice-Chair: Sure. This committee stands recessed for 10 minutes.

The committee recessed from 1115 to 1135.

The Vice-Chair: We now have a government motion.

Ms Murdock: I move that section 0.1 of the Workers' Compensation Act, as set out in section 1 of the bill, be amended by striking out "and" at the end of clause (c), adding "and" at the end of clause (d) and adding the following clause:

"(e) to require the board of directors of the Workers' Compensation Board to act in a financially responsible and accountable manner in governing the board."

Much of what I would have said has already been stated in the Conservative and Liberal motions. First of all, we heard during the public hearings that every employer group, I think without exception, came through and wanted this in the purpose clause. We feel that it goes to the capacity of the board of directors in terms of

determining under the purpose clause that it should be operating in a financially responsible and accountable manner and in governing the board—in other words, in performing its duties. I would say that because the imposition of duty is on the board of directors, it is not extending it to the system and that it is a duty that the people who are members of the board of directors would have to look at.

Having said that, it is important to remember that—and I want it clear, particularly since the last Liberal motion and the discussion that ensued—under the Corporations Act, boards of directors, regardless of what entity they are board members on, have a responsibility to act fiscally responsible. This is stating a duty that they really already have. Mind you, putting it in the purpose clause, as I said yesterday, I don't think is really legally binding, but that's where the employer groups want it, so we're doing it for them at their request.

Mrs Elizabeth Witmer (Waterloo North): I would concur with Ms Murdock. Much of the debate concerning the purpose clause has taken place yesterday and again this morning, so I'm not going to belabour the point.

However, I would just say in response to what has been said by Ms Murdock that this does not satisfy the business community. This does not respond to the concerns that they have had because, again, it restricts the board of directors to acting in a fiscally responsible manner. It does not refer to the entire administration of the board, the related agencies, the WCAT, the administration.

There is great concern that there will be no consideration taken as the government, which now has control over the board for the next year, continues to make changes, direct the policy of the board, make expenditures of millions of dollars.

Again, there's no impact on the decisions on the larger community and also on the impact on the life of this province in this particular amendment and certainly it does not address the issue of being financially responsible and accountable. We can't support this amendment, I would suggest to you, nor can the business community. This does not reflect the concerns that they had because it does not refer to the entire Workers' Compensation Board administrative structure; it refers only to the board of directors.

What the business community was looking for was the need to ensure that the entire Workers' Compensation Board structure would act in a financially accountable manner. So we're still going to continue to allow the setting of lavish and trendsetting awards and there's great concern that the expenditure of money will continue.

The Vice-Chair: Seeing no further discussion on the motion made by Ms Murdock, shall the motion carry? All those in favour? Opposed? Carried.

Shall section 1, as amended, carry? Carried.

On section 2, there are no amendments. Shall section 2 carry? Carried.

On section 2.1, Mrs Witmer.

Mrs Witmer: "I move that the bill be amended by adding the following section:

"2.1 The act is amended by adding the following section:

"Crown bound

"2.1 This act binds the crown."

The explanation I would give for adding this is that this amendment would bind the crown, and also does accompany the PLMAC purpose clause and I'm not quite sure why the government chose to omit it.

Ms Murdock: We're going to be voting against this, as I'm sure you realize. Right now, basically, if you were to slip and fall as it exists under the act, you really have no—you would sue, not the board but the onus for liability comes from the consolidated revenue fund and whatever government is in power of the day. We're not going to support this. We'll be supporting our own in terms of changing that so that if there was a slip and fall at Downsview, for instance, the board has the responsibility to cover that from their own funds.

Interjection.

Ms Murdock: Sorry, I'm talking to another section. This is in relation to the purpose clause? Yes, I think the thing speaks for itself. We couldn't possibly agree with the purpose clause binding the crown. Here you are in other instances talking about arm's length and government should not have that ability to go in and direct the board, and you're all concerned about the one year with government direction, or ministry direction. This would definitely give all kinds of directional possibilities to any government minister that was in power. I don't agree with that.

Mr Mahoney: That's really interesting. So what we're really saying here is in relationship to the arguments I made earlier about WCAT, is that the minister doesn't even have to be financially responsible or accountable in this regard during the one year particularly, but even after that, if the crown decides to come in and intervene in some way, there's no responsibility on the government to act financially responsible and accountable in any way whatsoever. Is that what you're saying?

Ms Murdock: The minister even now under the existing act can ask the board to do whatever, but the board decides what it's going to do. If the board chooses not to, then they vote on that and make their decision. That's not going to change.

Mr Mahoney: Except for the first year of the life of this bill, which will presumably be some time in November. The House comes back October 31, so some time in November, December at the latest, this bill will receive royal assent. So for the entire year of 1995, a minister, be it the current one, a new one appointed by the Premier, or a new one appointed by the people, a minister will have the complete authority to ignore the purposes of this bill with regard to not only financial responsibility, but even the responsibility of the board to provide fair compensation, to provide health care benefits, rehab services for injured workers or for their survivors. A minister can come in and just totally ignore the bill. Why would you allow that?

Ms Murdock: The thing is that until the appointment

of the new board—right now it's in transition. There's an interim director. Until the new board works out its protocols and how it's going to operate and how it will operate when they reach impasses—they've got to set up those kinds of directions for themselves. That's why there is a year. But also I think—it's pretty clear in that section and we'll be getting to that, I'm sure, later on—it still has to do it within the performance and the duties of the regular board. The minister is—under that in that year—also required to do that.

I would say too that politically—and you know this as well as I—a minister doing something that would be completely off the wall or disregarding—

Mr Mahoney: We haven't seen much of that lately.

Ms Murdock: —the financial responsibility and accountability would be, I think, fairly suicidal. They would do it at their peril.

Mr Mahoney: We're not concerned about you or your boss committing suicide. I find it actually quite astounding that the crown is not automatically bound by its own legislation. It's quite bizarre. Maybe we could get an opinion from the legal staff of the ministry whether or not it's necessary to say that this act binds the crown—or is that in some way a given in law? Is not the government bound by its own act?

Ms Murdock: I'm going to let Sherry Cohen respond as legal counsel for the ministry, but I would say that all legislation the crown is bound by, but go ahead.

Ms Sherry Cohen: Under the Interpretation Act of Ontario, there is a provision saying that the crown is bound where the legislation itself says it's bound, or by necessary implication it's clear that the crown is intended to be bound. That's why often in legislation you do see a provision, "This act binds the crown." Currently in the Workers' Compensation Act the crown is bound as employer. In the definition of employer the crown is clearly stated.

"This act binds the crown" is certainly not necessary when we're talking about the crown as employer. "This act binds the crown" is saying the whole act, not just the purpose clause. What we have here is really something that is not necessary because it's more getting into I think the ability of a government, this government or a future government, to amend the act. You cannot bind a Parliament or the Legislature in terms of not amending future legislation. This really isn't necessary in that respect.

Mr Mahoney: We've seen over the years numerous cases of—and this is not even this government—former governments that have instituted exemptions. Whether it be to an environmental process, they have exempted in the past themselves, whether it be with respect to construction—I can think in my own community when we built Highway 403 some years ago, there was a provincial exemption under the Conservative government of the day to not require an environmental assessment for work that was done in the valley of the Credit River where the bridges were going over—and yet, when the city did a bridge to the south, what's called the Burnhamthorpe Road bridge, there was a requirement on the city to conduct a full environmental assessment. When the

province came in, not half a mile north of the Burnhamthorpe bridge and built Highway 403, they exempted themselves from the same requirement that the municipality was placed under and simply steamrollered right through the valley with no environmental assessment whatsoever.

Could this not in a sense, without this amendment, allow for the same thing? Could the minister come in, simply declare that he is unilaterally taking over the board, that his decisions will be based on whatever he feels is appropriate, with no financial responsibility, with no compensation responsibilities in regard to (a), (b), (c) and (d) that are currently in the bill? The amendment that you have now passed, presumably binding the board of directors, does not even bind the minister. This is bizarre, if a minister of the crown—and specifically in this bill, where the minister from the date of royal assent has one year to do whatever he wants with the board. I just find it incomprehensible.

Is there a relationship between the examples I gave, with a government's ability to exempt itself from other provincial regulations, and a minister's power under this act and the amendment that Ms Witmer has put forward?

1150

Ms Cohen: I'm not familiar with all the legislation you refer to. I do think, however, and perhaps legislative counsel can correct me if I'm wrong, the Ontario Environmental Protection Act does bind the crown. A municipality is not considered the crown in law; that's a delegated body. It's not considered the crown. So municipalities are bound by all legislation; you do not require a specific provision to bind a municipality, unlike the crown, which has special status in law as the crown.

But what we have here, I assume you're referring to the section down the road that the parliamentary assistant will speak to, refers to policy directions that are a reference to the performance of the powers and duties of the board of directors under the act. Therefore, it would be my opinion that the minister could not give a policy direction to the board that was not consistent with the act, and it would be the entire act, not one provision or another.

Ms Murdock: Nor could the minister disregard the board of directors and what its duties were. You wouldn't want that, I don't think.

Mr Mahoney: Could you just help me with this section 65.1, page 5 of this bill? I get all confused with sections of the act and sections of the bill and everything else, so let me refer you to the page number: page 5 of this act, 65.1, where it says, "The minister may issue policy directions that have been approved by the Lieutenant Governor in Council on matters relating to the board's exercise of its powers and performance of its duties under this act."

Could that be interpreted to say that a minister disagrees with a decision made by the board to not include stress as a compensable—I'm just using this as an example, because it's one we're all familiar with. The board makes a policy decision not to include stress as a compensable injury. Could the minister then come in and,

as this says, "issue policy directions...approved by the Lieutenant Governor in Council" with regard to that decision?

Ms Murdock: This is on the supposition that there is no board of directors in place or that there is a board of directors in place?

Mr Mahoney: Excuse me, where does it say that?

Ms Murdock: No, no, I'm asking you.

Mr Mahoney: I'm asking for clarification. We have an amendment by Ms Witmer that says that this act, which would be this entire document, binds the crown. We have one section in the act that says, if I read it correctly, that the minister can overrule—and this isn't even a one-year deal. This is, "The minister may issue policy directions...approved by the Lieutenant Governor in Council on matters relating to the board's exercise of its powers and"—this, I think, could be very interesting—"performance of its duties under this act."

So the board performs a duty that it feels it has and it allows stress to be a compensable injury or it disallows it. Could the minister, under this, without the amendment Ms Witmer has put forward and in interpreting subsection 65.1(1) of this act, policy directions, come along and overrule the board on that?

Ms Murdock: I agree that "performance of its duties under this act" would mean, particularly now with the purposes of the act including financial accountability and responsibility, that that would have to be included.

But in subsection (2), if you look, "In exercising a power or performing a duty under this act, the board shall respect any policy direction that relates to its exercise."

That all has to do under, "The minister may issue policy directions..."

"(3) The board shall report to the minister whenever it exercises a power or performs a duty that relates to a policy direction."

Mr Mahoney: It's fascinating.

Ms Murdock: Yes. I'm not saying that a minister would—

Mr Mahoney: I'm not either.

Ms Murdock: —or the LGIC would give a direction to the board that would be completely opposed to the principles and directions of the board. I suppose any government can do that if it wished.

Mr Mahoney: Let me take you into the future a little bit—

Ms Murdock: Yes.

Mr Mahoney: —and assume that you find yourself in the interesting position of being in opposition—I'm being generous—and of being the critic of another party in power and the Minister of Labour decides to come along and unilaterally, arbitrarily, counteract by an order in council a decision made by the Workers' Compensation Board.

Let's reverse these. Subsection (3) says, "The board shall report"—not may report, not shall inform—"to the minister whenever it exercises a power or performs a duty that relates to a policy direction."

To stick with the example that's clear, understandable and simple: stress. The board makes a decision to include or not include stress as a compensable injury. Under subsection (3), they have an obligation, a responsibility. Under this act, they have no choice; they shall report to the minister. The minister says, "Well, members, ladies and gentlemen, in exercising that power or performing that duty under this act, did you respect any policy direction that relates to your exercise?" They answer, and the minister comes back and says: "I don't agree with you. Under subsection (1) I'm going to issue new policy directions that have no relationship to your responsibility as a board."

Forget that you're the government, Madam Parliamentary Assistant. Forget that. We're giving an inordinate amount of power to a political person here to make a decision with regard to a board policy decision and simply overturn it. I think that's frightening and I think that's counter to the democratic principles around the Legislative Assembly of Ontario to impart that amount of power, from an agency that is supposed to be at arm's length from the government, to an elected official. If that's what you really want to do then maybe we should simply disband the Workers' Compensation system in its entirety, bring it in as a division of the Ministry of Labour and let the minister take the responsibility since he's going to have the power under this particular section.

Interjection.

Do you have anything intelligible to say? I couldn't hear that. Not you. You're—

Ms Murdock: Thank you very much.

Mr Mahoney: No. I would never question the intelligence, just the logic and the believability at times.

Ms Murdock: No, no, never believability. The provision is in there to assist the board in forming its own structures in terms of operating as a corporation. I think all of us would agree, and we've heard certainly if we don't know about it, but I know the critics and myself realize that there have been some operational problems in terms of how things are done at the board and that they are going to have to get themselves organized. In the meantime, that's the only purpose that that section has been there for.

I'll use BC as an example, because BC's experience when it set up a bipartite board was that in order for them to set up their own protocols as to how they would operate in terms of coming to consensual agreements and then when they came up against controversial items and hit impasses, they developed their own protocols and basically went off and did that. In their experience, it was almost a year before they actually had those protocols set up.

So what we're saying is, we are now asking this new board to operate on a bipartite basis. We have experienced already, in the past three years, that when they've hit impasses there is no protocol set up for how they will operate. So they're going to have to hammer that out themselves. While they're doing that then someone has to be steering the ship, and we will be doing that under the

act itself and all sections of the act in terms of determining entitlement. There is no intention on the part of this government to suddenly go off willy-nilly and set up new entitlement provisions.

The Vice-Chair: It appears that we're not going to reach any agreement in the near future so this committee will stand recessed until 2 o'clock this afternoon.

The committee recessed from 1201 to 1414.

The Vice-Chair: Mr Mahoney, I think you were about to take the floor on the motion by Mrs Witmer.

Mr Mahoney: Right. We're dealing with the motion wherein the crown is bound by the act that we're dealing with, and I expressed concern about section 65.1 and the potential power of the minister. Just to create continuity, both in my mind and perhaps in the mind of the parliamentary assistant and the staff from the ministry, my concerns were and are around the fact that the minister must be reported to by the board when the board exercises a power or performs a duty relating to a policy direction, and some strong words in there, not "may inform the minister" but "shall report to the minister," which connotes that he's going to be running the show.

Now, we know that for a period of one year the minister, he or she, will have clear power to make decisions on behalf of the board, but this indicates that it will go even beyond that. The follow-up in section 65.2, though, is most interesting. This is actually one part of this bill that I agree with. Establishing a memorandum of understanding that is renewable every five years seems to me to make sense. A lot can happen in five years, and yet you've got to have a reasonable length of time in which to establish policy and do business and see what the effect of that policy is. A three-, four- or five-year period is a reasonable period for a memorandum of understanding to live without review, so I agree with the government in doing this.

The concern I have, though, is that you establish a memorandum. In that memorandum, you address the accountability of the board to the minister—and that's the very first thing you address in the MOU—and yet that's already clear in the section preceding 65.2, where it says "the board shall report to the minister," "the minister may issue policy directions" etc. There seems to be a contradiction wherein it's defining, in the previous section, section 1 of the memorandum of understanding.

Then the memorandum of understanding lays out the reporting requirements of the board to the minister. Once again it says here that the board "shall" report to the minister on policies; once again it's contradicting. It will deal with "matters of government policy that the board shall respect in the conduct of its affairs." Once again, the minister has a hammer in the section preceding this to come in and tell the board that it's going to do certain things certain ways, whatever way he decides.

Then, of course, the catch-all that you see everywhere in this bill: "Any other matter that may be required by order of the Lieutenant Governor in Council," and "any other matter agreed to by the board and the minister." That I don't mind. At least there's a requirement for some kind of consultation implied there and some kind of

agreement to be entered into between the minister and the board, even though the hammer that the minister has over the board in the previous section would seem to place the fifth clause in the memorandum of understanding in some jeopardy.

So I think this whole section really creates a serious problem, particularly when you refuse to accept an amendment wherein the act binds the crown. It just seems to me that you're putting handcuffs of your own design on the board. You're not restricting agencies that impact on the cost, the policy or the running of the board, such as WCAT; you're entering into a memorandum of understanding between the minister and the board, which in its own definition and terms could be fine, but then you're putting the clause in it that allows the minister to just forget all of the rest of this stuff and do whatever the heck he or she wants.

I again ask the parliamentary assistant to look into the future and see herself in the role of being critic to the Minister of Labour of some other government. I wonder how she would feel about that minister having this kind of draconian power at his or her disposal.

Ms Murdock: I can certainly look into the distant future perhaps and see that, but I would say that it is only going to be in place for a year; not the memorandum of understanding for 65.2, but under 65.1, and it is, as I have stated earlier, for the purpose of giving the corporate board of directors the opportunity to set up their own protocols. I don't see that as being draconian; I see that as being wise management.

1420

Mr Mahoney: Help me with the one year. What section is that?

Ms Murdock: Subsection 65.1(4).

Mr Mahoney: Then you're going to have, following that, a memorandum of understanding after one year. During the year, you quite agree, the minister will have carte blanche?

Ms Murdock: Well, he has to act within the purposes—or within the scope of the act.

Mr Mahoney: No, he doesn't. It doesn't say that.

Ms Murdock: I know, but he—

Mr Mahoney: Where does it say he has to act within the purposes of the act? Would you like to make that an amendment?

Ms Murdock: Not within the purposes of the act. I did correct myself. I said within the scope of the act.

Mr Mahoney: So he doesn't have to act within the purposes.

Ms Murdock: He can't do anything illegal.

Mr Mahoney: No, but he can expand coverage.

Ms Murdock: Well, okay, in terms of entitlement, I would agree with you that he probably could.

Mr Mahoney: He could increase rates.

Ms Murdock: Well—

Mr Mahoney: I'm not saying, "Would he?" I'm not even saying it would be the current "he" that would make that decision.

Ms Murdock: No, I know you're not. Okay, technically, I suppose, when you look at that, within that year he has a lot of power.

Mr Mahoney: A minister could increase rates. Do you agree?

Ms Murdock: With cabinet approval, yes.

Mr Mahoney: A minister could decrease benefits.

Ms Murdock: Just a minute. I know what you're saying. I would like them to explain it, because I am obviously not understanding it as clearly as they do.

Mr Mahoney: Fine.

Ms Murdock: Go ahead.

Mr Mitchell Tokar: I'll respond to the question about decreasing benefits. Benefits are established in the legislation, so a direction could not decrease benefits.

Ms Murdock: Oh, I see.

Mr Mahoney: Mitch, with due respect, this act does not bind the crown. That's an amendment we're trying to put in place now. If the crown is not bound by the legislation and the minister may issue policy directions, albeit approved by cabinet, how can you say they can't decrease benefits or increase—well, take decreased benefits, because you point out that's established by legislation. They could change that.

Ms Murdock: No, they can't. He can't. It would have to be legislatively changed. The minister could bring forward a bill that would legislatively change benefits, either increase or decrease or whatever the case may be, but it would have to be done legislatively for that kind of thing.

Mr Mahoney: Could it be done by regulation?

Ms Murdock: No, because it's in legislation that it's 90% of net. If you wanted to change 90% of net to 80% or 100%, you would have to do that through the legislative process.

Mr Mahoney: So what kind of policies? We know that rates are not set by legislation, so rates could be changed, correct? I just want to understand what kind of power this minister of workers' compensation is going to have, because that's what you're creating here, potentially, a minister of compensation.

Ms Murdock: For one year.

Mr Steven Offer (Mississauga North): Who wants that job?

Mr Mahoney: Yes, who wants that job?

Ms Murdock: We're time-limiting it in the Workers' Compensation Act. The same provision exists in OTAB and it exists in the Power Corporation Act. That's where we got the wording, and the purpose is for a one-year period. As you and I know, to get anything changed oftentimes takes longer than a year. I wish it wasn't the case, but it does. I know your point that you're making, and you have made it: that a minister, whoever that is, could possibly use this beyond the intention of this government. However, the intent of this is strictly for the purposes of transition.

Mr Mahoney: I don't believe that any government would draft legislation with a hammer as strong as

65.1(1), (2) and (3) without some kind of intent, or if not intent, at least anticipating some possible requirement to use it. In other words, they put in the new board, they go through the transition, they're not happy with the policy directions of the board, in whatever way.

The other example, aside from increasing rates: You say they can't decrease benefits. I accept that. That's 90% of net. They certainly can change the level of compensable injuries. They certainly can expand coverage. They certainly could include other people in the workers' compensation system who are currently not included, ie, 700,000 workers who are excluded throughout the province. The minister could unilaterally make those kinds of decisions.

My submission is that a decision that would impact on this system, rightly or wrongly, is one that should be done after public consultation, after committee work, through legislation, through full input by injured workers and by managers and by advocates and by everybody, not to mention legislators, and should not be put in that kind of power. I don't know if there's a precedent; maybe there is.

Ms Murdock: Yes, there is. OTAB we did; we put it in and it's for ever, it's not a time-limited one, and the Power Corporation Act. I don't know which government did that but it doesn't matter, it wasn't ours, and it put it in with no time limitation either. So there is precedent for this, number one.

Number two is, to change something like what you're suggesting in terms of including banks or that kind of thing would require a regulatory change. It doesn't require a legislative change, but it would require a regulatory change because you'd have to change the schedule, you'd have to change that kind of thing.

With the growing, and I'm saying this positively, I think, that everything's being done with advisory groups of the stakeholders nowadays, it wouldn't be done in a short period of time. I would think that almost all those kinds of decisions would take a long time, just generally speaking, even without this provision there.

Mr Mahoney: There are some pretty dramatic differences, probably, in the nature of the funding with OTAB and the Power Corporation Act versus the WCB, the fact that WCB is probably seen somewhat as an arm's-length—it's certainly arm's-length whenever the minister has to answer a question about it in the Legislature. It becomes, "Oh, we don't want to go near that little baby." It becomes arm's length there—

Ms Murdock: All the more reason then to be very careful about this section.

Mr Mahoney: —and then it comes close to his bosom whenever he's trying to impress the injured workers or whomever else he may be trying to pull a vote from.

I recognize that there are some dramatic differences between those corporations, but I think in some sense you've answered my question. You have admitted that this gives an unusual amount of power to the minister and to cabinet over an agency that heretofore has been seen as operating, hopefully, at some arm's length and

with responsibility by a board, albeit a board appointed by the government, and sometimes politically influenced, we might add, by any government, not just yours. That's an issue I feel very strongly about.

But I think you really do serious damage by putting in place 65.2 with the memorandum of understanding and then totally, in my view at least, for one year destroying the impact of that in 65.1. I would reiterate that I think the motion by Ms Witmer binding the crown is a very appropriate motion and should be adopted. It would solve many of those concerns, if not all of them.

1430

The Vice-Chair: Further discussion on the motion by Mrs Witmer? Seeing none—

Mr Mahoney: Recorded vote.

The Vice-Chair: All those in favour?

Ayes

Arnott, Mahoney, Offer, Witmer.

The Vice-Chair: Opposed?

Nays

Duignan, Ferguson, Hope, Murdock (Sudbury), Rizzo, Wood.

The Vice-Chair: The motion is defeated.

A government motion is next.

Ms Murdock: Which one is it? I have three PC motions.

The Vice-Chair: New 2.1, numbered page 6.

Ms Murdock: All right. I move that the bill be amended by adding the following section:

"2.1 The act is amended by adding the following section before part I:

"Training agencies placing trainees

"3.1(1) In this section,

"'placement host' means a person with whom a trainee is placed by a training agency to gain work skills and experience;

"'training agency' means,

"(a) a person who is registered, under the Private Vocational Schools Act, to operate a private vocational school; or

"(b) a member of a prescribed class who provides vocational or other training.

"Election: trainees as workers of training agency

"(2) A training agency that places trainees with a placement host may elect to have such trainees considered to be workers of the training agency during their placement.

"Restriction on election

"(3) Only a training agency that is in an industry included in schedule 1 or 2 may make an election.

"Effect of election

"(4) Upon the board receiving written notice of a training agency's election, the following paragraphs apply with respect to each of the trainees the training agency places with a placement host:

"1. The placement host shall be deemed, for the

purposes of this act, other than subsections 10(9) to (12) and section 16, not to be an employer of the trainee.

"2. The training agency shall be deemed, for the purposes of this act, to be an employer of the trainee and the trainee shall be deemed, for the purposes of this act, to be a learner employed by the training agency.

"Exception

"(5) Subsection (4) does apply with respect to trainees who receive wages from the placement host.

"If trainee injured

"(6) If a trainee in respect of whom subsection (4) applies suffers a personal injury by accident or occupational disease while on a placement with a placement host then, despite subsection (4),

"(a) the trainee's benefits under this act shall be determined as if the placement host was the trainee's employer;

"(b) section 54 does not apply to the placement host or the training agency.

"Revocation of election

"(7) An election may be revoked by giving the board written notice of the revocation.

"Effective date of revocation

"(8) A revocation takes effect 120 days after the board receives written notice of it.

"Limitation on revocation

"(9) An election that is revoked continues to apply with respect to an injury suffered before the revocation takes effect."

This was brought forward—and I do apologize to all of the committee members and I thank you for your patience and graciousness in allowing this to be brought forward—by the Minister of Education, who asked if we would include it in terms of assisting the private training agencies in the province.

As many of us recall, about a year or so ago we had the whole issue of coverage under workers' compensation for students who were going into particularly hospitals, as I recall. They were having problems getting coverage and the training place in which they were learning their craft or their skill didn't want those people, should an accident occur, included on their workers' compensation rolls, and that's fair. So we arranged, for public training schools, that the schools would pay for it through a special fund and so on.

But it did not cover in any way, shape or form the private school situation. This motion will cover those private schools and we've had lots of requests from the private schools to do this. Otherwise, if an employer says no to the persons going on the training course, then they can't get that placement, and it puts those students in those particular schools at a significant disadvantage. That is why we're bringing it forward.

Mr Mahoney: I understand there is support for this in the industry as well and they've consulted and are supportive, and I will certainly be supporting it as well.

Mrs Witmer: I think I need to just clarify a few points related to this situation. I hear you saying that at

the present time then the private schools are having some difficulty, as far as finding placements for their students, because the employer doesn't wish to pay the WCB costs.

Ms Murdock: Yes. Basically that's the bottom line. They can find places but they could find more. Some employers are saying, "We'll take on that student and the possibility of injury and we'll pay his or her workers' compensation premium," but other employers are saying no, they won't take that chance. They'll take the students if someone else pays for them, because it does affect their workers' compensation premiums if those students were to get injured while they were working in that placement.

I understand the employers' concern. They don't want their workers' comp premiums going up, because the number of accidents of course increases their assessment rate and so on. So this actually helps the employers make the decision to take those trainees, but it also helps the training schools to place their students and get more employers who would volunteer to take on student trainees.

Mrs Witmer: What will happen now in the event of these private schools? Will they in essence pay the WCB costs of all students who are placed, or will it be a mixed-bag approach where the employers who are willing will pay the WCB costs, and those who are not willing, the private schools will pay the costs? What's going to happen?

Ms Murdock: When I was reading this, it's elected by the training agency. The agency makes the election. Obviously, if they're put into a place that isn't covered, such as a bank, then there isn't any workers' compensation premium involved.

Mrs Witmer: It's going to mean that in some cases the schools will cover the trainee and in other cases the receiving employer.

Ms Murdock: If the employer is willing to do that, but let's face it, if the employer has an option, why would he pay for somebody else's workers' compensation premium if he didn't have to? I can't imagine. I think once this is in place, what will happen is the training agencies—

Ms Witmer: Will pay.

Ms Murdock: All of the employers will opt for that coverage.

Mrs Witmer: Then the WCB costs actually will be put upon the students in increased tuition fees. Obviously, the cost is going to have to be covered somehow.

Ms Murdock: I don't know the answer to that.

Mrs Witmer: It is the school that's then going to be picking up the cost, as opposed to the employer.

Ms Murdock: Depending on what their classification is under the board and so on.

Mrs Witmer: We certainly had problems originally with the decision to require WCB coverage for students. Now that this obviously is the policy of this government, then in all fairness to the students who are being impacted, we will allow this amendment to pass and we would support it.

Ms Murdock: Thank you.

Mr Offer: I just have a quick question. Dealing with

the restriction on election, which is subsection (3), you had used the example in a certain circumstance: for instance, that a bank may be a trainee and it could make an election, but it can't make an election.

Ms Murdock: That's right.

Mr Offer: I just wanted to get that clear. Banks don't have the right because they are not one of those—

Ms Murdock: I did say that if they went to a group that wasn't covered, there wouldn't be any coverage required.

Mr Mahoney: Just to clarify and follow up on the point Ms Witmer made about who would pay for it, in fact the WCB in many instances would simply absorb the cost.

Ms Murdock: That's right. That's what they have done in the past, which ends up putting more onus on the central fund.

Mr Mahoney: So the reality is that all business ultimately would be paying for this in premiums. I guess the argument would be that business in general benefits from a better-educated, more highly trained workforce. That's the rationale behind it, but I don't know. If it turned up in the tuitions, the tuitions might be paid by the WCB or they might be paid by someone else you could see in sending them for training. Those costs could be absorbed right by whoever is requiring the training. It could be the employer who could pay them directly.

1440

Ms Murdock: I don't understand what you mean, I'm sorry, when you're saying that tuition could be absorbed by—

Mr Mahoney: If the WCB is sending someone, as it does now, to schools for retraining or things of that nature, are we not including those individuals in this situation? They're paying a certain amount of money to retrain or re-educate. There was an issue where they were sending students for upgrading in math and English at costs of \$10,000 per course. Would that not include these costs?

Ms Murdock: You're saying when a training school sends its people off to, I don't know, a co-op program where they get training on the job at specific jobs. When they apply to that particular school, the understanding is, "I'm going to this school and I'm going to get on-the-job training somewhere with some employer," and it would be part of their tuition costs. But I don't know whether or not any workers' compensation training course would be involved in that.

Mr Mahoney: I guess it's how far you extrapolate it. It seems to me that much of the cost of this would be absorbed by the system and ultimately by the employers who support the system.

Ms Murdock: I do know that this particular amendment has been requested by the schools and the schools themselves have stated that they are willing to pay the workers' compensation premium.

Mr Mahoney: I'm not saying it in a form of creating a problem, just in a form of understanding it myself, seeing it as a reality.

Ms Murdock: Mitch says that he can probably clarify this, hopefully.

Mr Tokar: Mr Mahoney, if I understand you correctly, you're referring to when the Workers' Compensation Board stands in the shoes of an organization.

Mr Mahoney: Right, which happens quite often.

Mr Tokar: Which happens quite often, that's correct. In those cases it's the accident employer, it's the original employer of that injured worker that would bear the costs of the retraining and the costs of possible future injury.

Mr Mahoney: And the premiums?

Mr Tokar: The premiums would be related to that accident employer.

Mr Mahoney: Okay.

The Vice-Chair: Further discussion?

Ms Murdock: I just want to thank everyone because in order to get this to go through—

Mr Mahoney: You shouldn't do that until after the vote.

Ms Murdock: —unanimous consent is required and I do appreciate the fact that unanimous consent from the opposition parties has been given.

The Vice-Chair: Seeing no further discussion, all those in favour of new section 2.1 moved by Ms Murdock? Agreed? Carried.

Next, we have a PC motion.

Mr Ted Arnott (Wellington): I move that the bill be amended by adding the following section:

"2.2 The act is amended by adding the following section:

"Conflict

"2.2 In the event of a conflict between this act and any other act, this act prevails unless the other act states that it is to prevail over this act."

The point of this amendment is to further continue to promote the concept of the PLMAC process and the purpose clause that was agreed to through that process. This amendment reflects the PLMAC agreement and the purpose clause.

Ms Murdock: When I read this I just said: "I don't know what this means. Have Elizabeth explain it." Basically, if I'm reading this correctly, it says if there's a conflict, this act prevails unless another act states that it's to prevail over this act. That's the way it works now, so I don't see what this is doing and that's what I need to have explained to me. It doesn't change anything, so I don't know why we would bother putting it in.

Mrs Witmer: If it doesn't change anything, you can support it.

Ms Murdock: But you just don't put things in legislation just because—I don't even know what for.

Mr Mahoney: I have to agree that I need some assistance from the Conservative caucus to tell me what this bafflegab means.

Mrs Witmer: As Mr Arnott has attempted to point out, if you had passed our original motion to put back in the original PLMAC purpose clause, this actually would

have been consistent with that purpose clause. However, given that it hasn't been supported, this in some ways is—we'll withdraw it.

The Vice-Chair: Mr Arnott has to withdraw.

Mr Arnott: Yes, I will withdraw it.

The Vice-Chair: Would you like to move the motion on page 8, Mrs Witmer?

Mrs Witmer: I move that the bill be amended by adding the following section:

"2.3 The act is amended by adding the following section:

"Five-year review

"3.1(1) Five years after this section comes into force and every five years afterwards the Provincial Auditor shall review the Workers' Compensation Board and report to the Speaker of the assembly.

"Advisory committee

"(2) The Provincial Auditor shall appoint an advisory committee of representatives of employers and workers to assist the Provincial Auditor in the review.

"Report contents

"(3) The Provincial Auditor's report may recommend changes to the Workers' Compensation Act or the memorandum of understanding required under section 65.2."

What we are suggesting here, of course, is a mandatory five-year public review of the Workers' Compensation Board by the Provincial Auditor, and he or she is to be assisted by an advisory committee of relevant stakeholders. We have suggested that the employer and employee communities, obviously, assist in that work, and also that auditor's report could recommend changes to the Workers' Compensation Act or to the memorandum of understanding based on any review that is done.

I think one of the concerns we have had expressed on numerous occasions by people in the House and elsewhere is the fact that this act has not been reviewed on a regular basis. It has not at times responded to the present-day needs of the modern workplace and so we are strongly suggesting that this type of review take place. They're actually doing this in the province of Saskatchewan. They have enacted in the province of Saskatchewan a very similar provision as we are suggesting here. Also, if you take a look at what's happening within the Workplace Health and Safety Agency, we presently have a similar review taking place in that agency by Dr Carolyn Tuohy. So we're saying, why not ensure that the board be reviewed on an ongoing basis, and we're suggesting a time period of five years would be the most appropriate.

1450

Mr Offer: I just have a couple of questions. I don't know if Ms Witmer or legislative counsel might be able to assist. Right now, under the current rules, is it not within the scope of opposition parties or indeed government to request provincial auditors to inspect any agency and/or ministry?

Mr Randy R. Hope (Chatham-Kent): The public accounts committee can request it.

Mr Mark Spakowski: I don't have the answer to that. The clerk may know something about that in relation to the public accounts committee.

Clerk of the Committee (Ms Tannis Manikel): Having been clerk of the public accounts committee, I'm aware that the minister can request the Provincial Auditor to perform a special audit, or the standing committee on public accounts may request it, or the Legislature as a whole. If I remember correctly, and this is based just on my memory, I don't believe that individual members could go to the auditor requesting a special audit be done.

Mr Arnott: You can make the request, but you can't compel them to do it.

Clerk of the Committee: Yes, you could make a request. He probably, and this is just going by past auditors, would indicate when they were next planning on doing a review of that area and discuss that with you.

Mr Offer: A question then is, in the normal course of estimates could the Workers' Compensation Board be part of that?

Ms Murdock: Of what?

Mr Offer: In the normal course of estimates process.

Mrs Witmer: You're doing the whole ministry.

Ms Murdock: I'm saying no.

Clerk of the Committee: The Ministry of Labour is, but I can't say for sure if—I haven't worked on estimates for a while and I can't say for sure whether or not the Workers' Compensation Board per se would be.

Mr Offer: Then I guess my next question is to Ms Witmer. On the basis of the amendment, is it the position of your party that you believe that the Provincial Auditor should be able to recommend amendments to any legislation in the province?

Mrs Witmer: No, I can't speak for other legislation. We're only speaking to the Workers' Compensation Board at the present time.

Mr Offer: I was just asking the question in order to get some clarification on the section and whether this could serve as a precedent for an expansion of the duties, in principle, of the Provincial Auditor in order to do something greater than the type of audit that the auditor now performs.

Mrs Witmer: No, it would certainly not be our intention, nor was that ever discussed, that we would expand the duties of the Provincial Auditor. We're simply concerned at the present time with the state of the WCB. We felt very strongly that this was an appropriate motion, to look at having a review every five years.

Mr Mahoney: Just to get some clarification as to how the audit by the Provincial Auditor of the decision to build a new building at Simcoe Place took place, was that directed by the minister? Was that requested by the Legislature? The Provincial Auditor's audit of the process to build Simcoe Place, how did that come to occur? Requested by public accounts?

Ms Murdock: Yes, it was. He wasn't giving a report and public accounts had the Provincial Auditor look at Simcoe Place. It was not at our request or at yours.

Mr Mahoney: It would have had to have been agreed

to by the government because it controls the public accounts committee.

Ms Murdock: We're not going to disagree. Why would we disagree with something being examined by the Provincial Auditor?

Mr Mahoney: So you agree with this amendment?

Ms Murdock: No, because I think it's covered in section 77 of the act as it exists already.

Mr Mahoney: Could you help me there? How is that?

Ms Murdock: Section 77. There is no time frame. That's the only difference, but, "The accounts of the board shall be audited by the Provincial Auditor or under his or her direction by an auditor appointed by the Lieutenant Governor in Council for that purpose and the salary and remuneration of the auditor so appointed shall be paid by the board as part of its administrative expenses." It goes on. The Provincial Auditor already has the opportunity to do that and, as was evidenced in its report to public accounts, he's already made recommendations on changing the MOU. He does a lot of that already.

Mr Mahoney: I just wonder if your objection is the five years or if your objection is the advisory committee.

Ms Murdock: I think the Provincial Auditor should be able to audit the books of the Workers' Compensation Board at his or her discretion and not be limited to a five-year—I think if he wants to do it annually, that's his prerogative, or if he wants to do it every five years or every three years. I think that's what he's in that job to do.

Mr Offer: Your concern with the five years is that it binds the hands of the Provincial Auditor to not look at the system more than once every five years. If the amendment were changed that gave the Provincial Auditor the right to conduct an audit of this kind every five years at a minimum, so that you wouldn't be binding the hands of the auditor, the auditor could go in every year if the auditor so wished but at least once every five years, would you be agreeable to that?

Ms Murdock: Under the existing legislation, he already has the right to do it as frequently as he wishes, and I think that's covered. In terms of the subsection 3.1(2) portion, "...shall appoint a advisory committee of representatives" from labour and management, the man is an accountant, the present one is an accountant. They usually are. He's got staff who are there. He goes in and he does an audit of them. I don't think he needs that. I personally think it's setting up another advisory committee. Here I am speaking on behalf of the Provincial Auditor, but I don't think he needs that.

Subsection 3.1(3): He does that already. I don't think I've heard him make any recommendations to change the Workers' Compensation Act, at least not in my four years here, but he certainly has made recommendations as to how the board should operate and what its memorandum of understanding should be stating.

Mr Randy R. Hope (Chatham-Kent): Just to look at the amendment, first of all, at the beginning of the process dealing with the amendment, I won't be supporting it for the simple fact that I believe the royal commis-

sion has an obligation to go out to the general public, because in this bill we're only dealing with part of a problem that exists for injured workers, corporations, everybody in the public in general. I believe that putting something like this into place only alleviates, whether it be our government or the next government, saying, "Let's just wait and see what the Provincial Auditor says versus the consultation that will take place around the royal commission."

I believe that what we're trying to do through this amendment is just prolong a process. We are introducing amendments to workers' compensation which hopefully will address some of the problems that are faced by individuals out there, whether it be through the injured worker group, the union group or the employer group. But one of the things that we mustn't forget is that we are in full support of bringing forward the royal commission to deal with the whole issue of disabilities in this province, whether it be through a universal disability program or whether it be just straightening up this workers' compensation.

I just want to keep people's thoughts in perspective, that as we try to reform this system with the new management structure that's coming in place with this legislation there is an overall objective, which I believe is on all parts of every political stripe, the overall total reform of assistance to deal with both the employers' needs and the injured workers' needs and the issue of making sure that there's vocational rehabilitation in place, to make sure that there's adequate training in place. Those important things might not necessarily just be one disability program that exists in our province but a number of disability programs that have to be brought under one roof.

I won't be supporting the amendment, as I stated earlier. I just feel it's going to be a waffling part, that people will say: "Let's wait and see what the Provincial Auditor says. Let's wait and let's wait and let's wait," and nobody, again, will actually deal with the problem of workers' compensation. We've clearly heard from a number of presenters about the lack of claims adjudicators' ability to function appropriately with claims. We've heard constant bickering for years. We weren't just talking about claims that happened under Bill 162 of the Liberal government or any other bill; we've heard numerous complaints for many years.

1500

I just ask members who are going to be voting on this to keep in mind that the overall objective is to put these midterm changes in place and then from there to get the royal commission out to the general public to meet with the injured workers' groups, to meet with the union groups, to meet with the employers' groups and develop a strategy which deals with people who have been injured by workplaces, making sure that there are programs in place to adequately meet their needs in making them a key part of our society.

I won't be supporting this amendment. All I feel is that it's a slough and putting it off for a later date.

Mr Arnott: I think it's a reasonable amendment. I just wanted to ask a question of the parliamentary

assistant, because I believe you said in section 77 of the existing act—

Ms Murdock: Of the whole act, yes; this is a bill.

Mr Arnott: Right. Section 77 of the existing act allows the auditor to come in and audit?

Ms Murdock: Yes.

Mr Arnott: But as I understand it, this amendment would require—

Ms Murdock: Well, not "allow" it; it's a "shall," it's a requirement. It says, "The accounts of the board shall be audited...." and then there are provisions in the act that say that the board must file annually its reports—now, this will surprise you because it certainly surprised me—to the superintendent of insurance as well as to the Minister of Labour, and then the Minister of Labour is to submit that report to the cabinet and then before the assembly. Subsection 78(2) is probably relevant. It was after this that it went to public accounts and then after that, for instance, that Simcoe Place was reviewed. It's in the act already is what I think and I wouldn't want to hamstring our friend the Provincial Auditor.

Mr Arnott: Neither would I. As I understand it, and as was requested by the Ontario Hospital Association, it would be a minimum of every five years, a full audit, and it wouldn't be just every five years, it would be that at the very least.

Ms Murdock: Yes. There is no time frame in here, so if the auditor wished to do this on an annual basis, the auditor could do that, if he wanted. He does do it now.

Mr Arnott: He annually audits the Workers' Compensation Board?

Ms Murdock: The board's books.

Mr Arnott: However, who does he report to?

Ms Murdock: The auditor?

Mr Arnott: Yes.

Ms Murdock: Thus far he seems to have reported to the—

Mr Arnott: Legislative Assembly.

Ms Murdock: Yes.

Mr Arnott: Do we annually get a report from the auditor on the Workers' Compensation Board is what I'm getting at?

Ms Murdock: I don't know.

Mr Arnott: I don't think that we do.

Ms Murdock: I'd have to ask.

Mr Arnott: We annually get a report from the auditor and it's got all the horror stories of the waste.

Ms Murdock: I mean, it's included within his total report.

Mr Arnott: But whether or not there's always a specific explanation of what's going at the Workers' Compensation Board and how efficiencies could be gained and how money is being wasted, whatever, I don't think, to the best of my knowledge, that we get that every year.

Ms Murdock: We went through, I think that it was five committees that this standing committee—no, five

total that we've gone through on some WCB matter. Are we back into the value-for-money audit?

Mr Arnott: I'd like to see those too. We talked about that four years ago.

Ms Murdock: Because that has nothing to do with this.

Interjection.

Mr Arnott: No, value-for-audit of the administration.

Ms Murdock: The Peat Marwick Thorne auditor's report to the Workers' Compensation Board, the Minister of Labour and the Provincial Auditor, the chartered accountants Peat Marwick Thorne, pursuant to the Workers' Compensation Act and the provision—I'm going to paraphrase—that it should be audited by the Provincial Auditor, "We have audited the balance sheet of the WCB as at December 31, 1993," and it proceeds to go through, which every member in the House gets.

Mr Arnott: That's the report of the board.

Ms Murdock: This is done annually. The 1993 annual report—

Mr Arnott: Of the board.

Ms Murdock: Yes, and we all get that and what the auditor did was he had Peat Marwick Thorne do the audit.

Mr Arnott: Right, so he's just substantiating that the dollar figures in the report are accurate and represent the true financial position of the board.

Ms Murdock: Yes. Now, given what the past few years have been with the Provincial Auditor we presently have, I would say—I mean, I don't know whether other provincial auditors have done that, but if he has felt that there was a glaring mistake or something should be done, he has not been silent on the subject.

Mr Arnott: Right. But we still think the intent of this is to provide the members of the Legislature the report at least every five years, which would give, hopefully, recommendations—

Ms Murdock: And that it has been audited and reviewed by very competent—

Mr Arnott:—similar to the auditor's annual report that he presents to the Legislature—

Ms Murdock: Yes, over and above that.

Mr Arnott:—which specifically gives helpful—maybe the government of the day doesn't find it as helpful as the opposition—recommendations as to how government spending could be changed that would be in the public interest, and waste that could be eliminated.

Ms Murdock: That's where the auditor puts it in his own report, usually.

Mr Arnott: Right. Again, there are not always recommendations on the Workers' Compensation Board.

Ms Murdock: No, not unless he chooses to make them.

Mr Arnott: Hence the need for this amendment.

The Vice-Chair: Thank you. Mr Mahoney.

Ms Murdock: Can I—

Mr Mahoney: Do you want to add something?

Ms Murdock: I just wanted to ask whether or not you consulted with the Provincial Auditor when you did this.

Mrs Witmer: No.

Mr Mahoney: I think the principle involved here of putting in place some requirement for the Provincial Auditor to report to the Speaker and ultimately to the assembly is a good principle, but I think this amendment will add tremendous confusion to the system. Section 77 of the overall act, as the parliamentary assistant has already pointed out, uses the words, "The accounts of the board shall be audited by the Provincial Auditor." "The board shall after the close of each year file with the Minister of Labour an annual report...." "The Minister of Labour shall submit the report to the Lieutenant Governor in Council" and lay it before the assembly. It seems to me there is a process in place that's quite clear, and we don't have to wait five years.

The reason I asked about how the somewhat damning report of the Provincial Auditor on the process involved around the decision to build Simcoe Place arrived on all of our desks is because quite clearly it would fly in the face of the democratic process for any government, majority or otherwise, to refuse to allow the Provincial Auditor, upon the request of both opposition parties in the Legislature, access to go in and audit any government agency. I just frankly think that the heat would be so extreme on any government that tried to stonewall that type of process.

I also think that "an advisory committee of representatives of employers and workers to assist the Provincial Auditor" is a little bit bizarre, because an audit by a Provincial Auditor would be, I would think, as in the case of Simcoe Place, twofold. It would be the dollars and cents and it would be the process under existing government legislation. If you'll recall, the Provincial Auditor felt that there was a requirement upon the board to come to cabinet for approval of the building. They didn't do that and they used their interpretative powers to decide that they could bypass the cabinet route because they were only tenants in a building that the WCB investment fund owned, which is bizarre in itself. But in any event, they made that decision and they were duly slapped by the Provincial Auditor.

I can't imagine that a group of employers and workers whose primary focus and interest is on the day-to-day operation and on benefits and on getting people back to work, which is where I think we want to focus their efforts, would add to a Provincial Auditor's report in that regard. I think it would be an undue layer of bureaucracy and very confusing. I also find it almost bizarre to imagine a Provincial Auditor coming in with a number of amendments to the Workers' Compensation Act itself, which is what the third part says.

While the heart may be in the right place to ensure that there is a provincial audit of this system on a regular basis because of the financial problems we've seen, I think this particular motion would create a great deal of confusion.

The Vice-Chair: Seeing no further discussion on the motion by Mrs Witmer on section 2.3, all those in favour? Opposed? Defeated.

1510

Mr Witmer: I move that the bill be amended by adding the following section:

"2.4 The act is amended by adding the following section:

"Commission to examine governance of board

"3.2 (1) The minister shall appoint a commission to examine how the board is governed.

"Recommendations: multistakeholder board

"(2) The commission shall make recommendations as to how the board of directors of the board can be constituted to include representation from employers, workers, injured workers, professionals and the public."

This amendment really is designed to ensure that the anticipated royal commission, whenever it is going to be properly and duly constituted and individuals named, does indeed review the structure of WCB governance because, as I've indicated a number of times, I'm really concerned that we're dealing now with a piece of legislation, Bill 165, which in some ways does compromise the work of the royal commission. This is a very short-term solution to a very long-range problem and I believe it's absolutely essential that the issue of governance be looked at very, very thoroughly, so our intention is that the issue of governance would be closely examined and the best structure determined by the royal commission that's going to be doing the investigation.

The model we have in Bill 165, of course, calls for a bipartite model. We know that bipartism is not successful. We've certainly had that demonstrated as far as the Workplace Health and Safety Agency is concerned. That particular board has been extremely problematic. We also have discovered that the Premier's own PLMAC committee, which was bipartite employer and employee, was not able to reach consensus and come up with a piece of legislation that did reflect the position of both sides, so I think we have ample proof that bipartism does not work. This motion does stem out of our concern that we look at a different governance model than what we have before us.

Unfortunately, bipartism has been characterized in recent years, whether it's in the PLMAC or in the WSHA, by unresolved—well, I guess they haven't been able to resolve the differences of opinion. In the case of the WSHA, we've seen a tremendous amount of bickering and we've seen it; it simply does not work. We are very strongly suggesting that instead of a bipartite board, we would like to see a multistakeholder board. That position was certainly supported by many of the presenters that appeared before the committee. We would hope that within the board we could have the injured workers represented, members of the public; the medical community. I hope the government will recognize that bipartism doesn't work and that they will support the motion we have placed before you this afternoon.

Mr Mahoney: I'm just a little confused. I'm delighted that you've embraced the concept in *Back to the Future* of a board consisting of multistakeholders, but I'm just a little unsure when you say, "The minister shall appoint a commission to examine how the board is governed." Are

you talking about a commission that would be examining that board on an ongoing basis? Are you talking about a commission that would go at the same time as the royal commission? Are you talking about the royal commission?

Mr Witmer: Yes, we are talking about the royal commission, Mr Mahoney, and that was the reference that we are making here. We want to ensure that would be one of the obligations and responsibilities that is given to the royal commission, to take a look at the composition of a multistakeholder board.

Mr Mahoney: I certainly agree with that but I wonder how that fits into this. The way I would interpret this motion, this amendment, is that it reads, "The minister shall appoint a commission to examine how the board is governed," which would seem to be a separate commission from the royal commission, which is not your intent, based on the answer to my question.

I wonder if the motion more appropriately should just—this should be amended to simply say that the royal commission be requested to examine the multistakeholder board concept. That certainly I could support. I don't know how the wording of that—and maybe we need to set this one down for the time being to see if the staff can come up with wording that would be more appropriate to that, because I don't think we need more commissions upon commissions. We need somebody to take a serious look at the multistakeholder concept and get on with it. Maybe the parliamentary assistant would even agree, if Ms Witmer agreed to set it aside for now, to have it reworded in such a way that it could convey that.

Mr Hope: First of all, we talk about hog-tying the royal commission. This is exactly what it does, it puts a specific mandate to it. You're clearly only focusing on the workers' compensation and I know a number of groups out there, both employer and non-employer groups, workers out there, that are looking for a more universal system. You might see through the royal commission's report, the report might indicate—and I use the word "might"—the abolishment of the WCB and the establishment of a universal disability program in this province. We're already talking about federal government, provincial government, disentanglement, all that good stuff, and there are moneys that come from other governments.

But even stand this thing down—I believe the royal commission ought to go out with a direction but not with a specific mandate, and allow the general public its opportunity to express a viewpoint on what it sees as a program to cover all citizens, whether they're employers or workers, in this province. You can stand it down if you want, but I won't be supporting it even if you bring it back because the royal commission has to have a lot of latitude to deal with a variety of feelings and input that will be out there. For us as a government to dictate very clearly in this legislation what they ought to be focusing on might not even be what the general public are asking for. So I won't be supporting the amendment even if you stand it down.

Ms Murdock: I have a question because I personally don't—

Interjections.

Ms Murdock: My father would never believe that I couldn't be heard over a crowd.

You see, I disagree with putting this in legislation, but having prefaced my remark with that, what would happen if one of the players refused to play? That was my question. Let's hypothetically presuppose here that it's legislatively put in and so now it becomes a legislative requirement. I think we would be hard pressed not to have a royal commission at this point, given the PLMAC and the announcement and so on. It would be very difficult. Having said that, what happens if one of the players, like one of the side players, says, "No, I'm not going to participate?" What do you do when it's a legislative requirement?

Mrs Witmer: Do you know what? Our intent here was twofold. Number one, we do not support the bipartisanship model of governance, and we wanted to make that abundantly clear. We do support the multistakeholder model and we also believe that given the lack of discussion concerning the composition of that board, we felt that one of the issues the royal commission needed to deal with was the composition of that board.

I would disagree, by the way, with Mr Hope. I believe it's absolutely essential when the royal commission is set up that it be given some very specific tasks and a mandate, because it's when you have an open-ended, nothing-type of mandate that you come up with nothing-type of solutions to problems. I think you need to identify what it is that you're going to go out and seek answers to and question people about and have discussions about. That was our real intention, to ensure that the government would indeed give serious consideration to the governance model that would incorporate a multistakeholder structure.

Mr Arnott: I wish I'd asked the Palmerston Chamber of Commerce what they thought about this amendment, but I didn't really get the chance to, unfortunately. I have a feeling they might have thought it was a good idea. I don't know. But I think it's a sensible amendment. Of course, as Mrs Witmer has indicated, it's meant to ensure that the government makes the commission, the terms of reference that are given to the commission, the enquiries, as wide ranging as possible.

We suspect that the government may specifically want the royal commission not to look into this issue because of a pre-conceived notion that the bipartite concept is sacrosanct. I think you want the royal commission to ask basic fundamental questions of the whole system. To me, the governance is one of the most basic, most important, most fundamental questions. That should be evaluated in a fair way through a royal commission process.

I think Mr Mahoney was trying to be helpful with his suggestions. Certainly our intent was that this would be coming through the actual royal commission process.

The Vice-Chair: Further discussion?

Mr Mahoney: Just to point out that if and when the royal commission ever surfaces, wherever it's hiding, and the Premier decides to actually formally do it, I'll be asking to present a document called Back to the Future

which has on page 11 a complete outline of a non-partisan balanced approach with a multistakeholder board. I'd be happy to share that with all members of the committee if they want it.

The Vice-Chair: Further discussion?

Interjections.

The Vice-Chair: To facilitate, is there a wish to stand it down to get the wording corrected, or do we want to vote on this?

Interjections.

The Vice-Chair: Vote on this? All those in favour of the motion by Ms Witmer? Opposed? Defeated.

Interjections.

The Vice-Chair: Perhaps we should have a 10-minute recess until people calm down. This committee stands recessed for 10 minutes.

The committee recessed from 1523 to 1548.

The Vice-Chair: On section 3, a government motion.

Ms Murdock: I move that section 3 of the bill be struck out and the following substituted:

"3. The act is amended by adding the following section:

"Election where compensation payable outside Ontario

"9.1(1) If a worker or his or her dependants are entitled, in connection with an accident in Ontario, to compensation under this part and under the law of a country or place outside Ontario, they shall elect whether they will claim compensation under this part or under the law of that country or place.

"Notice of election

"(2) A worker or dependants who make an election shall give notice of it in accordance with subsection 9(2).

"Effect of failure to elect

"(3) If an election is not made and notice given, it shall be presumed that the worker or his or her dependants have elected not to claim compensation under this part."

A number of people came before us during the public hearings and explained that it was not clear whether the accident occurred here or whether it occurred in another part of the country or outside the country. This is clearly stating that this is covering accidents in Ontario. It's to prevent a worker or dependant from collecting workers' compensation benefits from two jurisdictions. I think it was agreed that there was some difficulty in reading that clearly, and this clarifies that.

Mrs Witmer: I can appreciate that there needs to be some sort of a statement made concerning the fact that compensation claims should be limited to only one jurisdiction, as this section is attempting to do. However, I also believe that there should be recourse for the recovery of payments made when a person is found to have collected them from two different jurisdictions. Have you considered that at all?

Ms Murdock: Well, under the existing legislation, a hearings officer decided—and notice it wasn't even WCAT, Mr Mahoney—it was that unusual case that was allowed, where they were receiving it from Quebec and

Ontario, they were legal under the existing legislation. So it's pretty hard, when it's allowed, to go back and do that. But once this is in place, it would never occur, and if it did occur, then it would be contravening the law and you could collect, just as you can under Community and Social Services now.

Mrs Witmer: You say that you could collect, but is there any obligation on the part of the WCB to recover that payment, to ensure that any benefits that have been paid out that shouldn't have been could indeed be recovered?

Ms Murdock: Well, you may know this already, but the board has policy in place for overpayments, whenever they occur. I can certainly state on the record here for you today that the board can be advised that this is a concern and that their policy should include those kinds of overpayments in the future.

Mrs Witmer: But at the present time, there's obviously nothing on the books that would indicate that this indeed would happen. There's no penalty for the person who deliberately and knowingly does receive payment from two jurisdictions, and at the present time there is no obligation on WCB to recover the money that has been paid out.

Ms Murdock: Generally speaking, not just in relation to this alone, the board tries to collect its overpayments, if indeed it has overpaid. That would make sense. They're not out to lose money. I know there's been some difference on that, but certainly they will try and get back money that they have overpaid.

Secondly, I think too that there are interjurisdictional agreements whereby once election is made there is an agreement for the board, of whichever jurisdiction, to notify the other board, and that they don't make a payment if an election has been made. In this instance, they will take this. So once election's made, then there will be notification to the other board that no payment is to be made, or vice versa, if they elect to be paid by Alberta instead of Ontario, and so on.

I think, right now under the existing legislation, the situation is why this whole thing was raised in the first place. Once this is in place, that won't occur. But should an overpayment occur, the board will go after it.

Mrs Witmer: However, there's no obligation upon the board to go after it.

Ms Murdock: Well, it is a corporation.

Mrs Witmer: There's nothing in the legislation that would make it mandatory that they would try to recover that payment.

Ms Murdock: No, I don't think so.

Mrs Witmer: So in essence, an individual can try to get away with this, and maybe be successful for a couple of months until they're caught. There's no penalty. The benefits might not even be recovered in the future.

Ms Murdock: Just to respond, there is nothing in the legislation that requires the board to go after overpayments, but there is policy direction by the board of directors to their staff to go after overpayments.

Mrs Witmer: I guess that's part of the problem that

I have with the way Bill 165 has been written. The legislation is designed to be very intrusive as far as the employer community is concerned, and yet in this instance when an employee has been found to be doing something that is obviously wrong, illegal, there will be no penalty, there will be no punitive action taken at all, and yet in this legislation we are prepared to deal with employers in such a manner that they would be punished; not in this particular situation, but there are other examples in the bill where the legislation is very intrusive and does punish employers if supposedly they don't meet certain criteria.

Ms Murdock: I know which section you're talking about, but I would also point out that workers have been punished for years, long before this was even suggested for employers, in terms of return-to-work and rehab programs. Their benefits were cut off if they weren't cooperative, "cooperativeness" being determined by somebody at the board. So that punishment has always been there. But section 101 of the act, not the bill, says:

"It is the duty of the board at all times to maintain the accident fund so that with the reserves, exclusive of the special reserve, it will be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments that are to be made in those years in respect of accidents that have happened previously."

That, I think, would be any legislative requirement; in fact, that's what entitles them to go after overpayments in the first place, in any case. So this would be just added on as another instance of overpayment possibility.

Mrs Witmer: Possibility.

Ms Murdock: Well, if this works and notice of election is sent and everything else, then once it gets operating they shouldn't be paid from two jurisdictions. But this now states that you can't get money for the same accident out of two or more jurisdictions, period.

Mr Mahoney: There was a lot of concern about construction workers, who, as you know, are quite mobile. Say they're injured in Alberta, whatever, a back injury, and they go on compensation; a project comes up in Ontario. Are you saying that if they get a job in Ontario they would cease to collect their compensation benefits?

Ms Murdock: No.

Mr Mahoney: Only if they get a job in Ontario and are then—is it the same injury or a second injury or an exacerbation of the same injury? Who's going to define all this?

Ms Murdock: Provisions for that are under the board already, but what this is saying is that if I was a construction worker in Alberta or Manitoba, we'll say, and I injured my arm or leg or back, whatever, and I have an injury, that the Alberta or Manitoba board would be responsible for payment of that injury that occurred there.

If I move to Ontario and I get another job with another contractor and I injure myself in Ontario, if it's a new injury, automatically that comes under Ontario workers' compensation. If it's exacerbation of a pre-existing

condition and it happened with an Ontario firm, then you have your secondary injury enhancement fund to determine—to the same part of the body, of course—how that would work. But your total temporary benefits would be under Ontario law for being off work because of the injury that occurred in Ontario.

Mr Mahoney: How do we know in Ontario that someone's on some kind of a disability pension or is receiving compensation from British Columbia, for example?

Ms Murdock: When they make a claim to the board—we're relying on people's honesty as well—

Mr Mahoney: But there's no way of knowing. The reality is that you could have a worker injured in Halifax or in Vancouver or in Winnipeg, come to Ontario, take a job—I'm not trying to be too dramatic here—get injured or reactivate the injury and apply to Ontario. There's no internetwork, shall we say.

Ms Murdock: Yes, there is. There are interjurisdictional agreements with all the boards across the country.

Mr Mahoney: Is there an information highway on it? 1600

Ms Murdock: There isn't an information highway on anything really yet, but there will be. The other thing is that when your medical comes in, in terms of whether or not there's been a pre-existing injury, I'm sure that would be in the records, and if there was any suspicion that there might be, then that's what you have people at the board to look into: whether or not it is a reinjury.

Mr Mahoney: If a worker were to be collecting from two or three different jurisdictions, which I think is very possible because there is not a mechanism in place to check that—I'm not suggesting that a lot of workers would do that, but it's possible, and maybe the legal staff have got to answer that—would that precipitate fraud charges as a result of this section?

Ms Murdock: Are you talking different accidents?

Mr Mahoney: Not necessarily; it could be a recurrence. It could be that they show up in Ontario, take a job for a short time and then the same injury recurs.

Ms Murdock: That's what I was saying earlier. I would presume that the medical evidence could possibly show that there was a pre-existing injury, and then you have investigative staff at the board if there was any suspicion. If there wasn't any suspicion, I would imagine they would just look at it as they would any other case that came in as a claim, and it wouldn't be until later, if they found out, that they would go back on it.

Mr Mahoney: Could it conceivably, hypothetically, lead to fraud charges if someone were—

Ms Murdock: Intentionally doing it? You'd have to show intent, wouldn't you?

Mr Mahoney: You'd have to show intent for a conviction.

Ms Murdock: If you couldn't show that they were doing it with the intention of fraud—

Mr Mahoney: I don't want to argue a hypothetical case. You're putting in place a section, an amendment, the intent of which I agree with. What I want to deter-

mine is that there's some enforceability in this thing and that it's not a huge loophole or opportunity for someone who's less than honest to find a way to collect from more than one jurisdiction.

Ms Murdock: I'll let Mitch Toker speak.

Mr Toker: I think we should try to clarify a point or two. It is quite conceivable that an individual could be receiving compensation from several jurisdictions at one time for different compensable injuries. It's quite possible that someone could have a compensable injury from a time they were working in Alberta, be collecting that, and have a different compensable injury while working in Ontario and have a legitimate workers' compensation claim in Ontario. I presume you're not asking questions with respect to that type of fact situation.

Mr Mahoney: I'm talking about potential fraud, Mitch, someone who wants to abuse the system. We hear a lot of stuff about that. I'm not convinced it's as widespread as the media and some folks perhaps try to make it out to be, but we have to be realistic and realize that if there's an opportunity for someone to gain out of something—I don't want to create something that's going to open a door and create an opportunity for someone to be fraudulent or to abuse the system.

Mr Toker: This section would not impact at all the present policies and the present method the board uses to deal with and treat fraudulent claims. Conceivably, someone could try to make a claim to defraud our Workers' Compensation Board using injuries from another jurisdiction or conceivably that could be done by another method.

Mr Mahoney: Is there a time frame on the requirement for the worker to make an election?

Mr Toker: The worker would have to make an election before receiving benefits.

Mr Mahoney: But what I mean is, how long could it just go on sort of—

Ms Murdock: In limbo?

Mr Mahoney: Yes.

Ms Murdock: There are policies under the board already for delay in reporting an accident, so there is no time frame under this amendment. Specifically, the government motion does not include any time frame, but it is on the understanding that if you've had an accident, you're not going to wait around before you make a report.

Mr Mahoney: I'm thinking more in subsection (3) where it says, "If an election is not made and notice given, it shall be presumed that the worker or his or her dependants have elected not to claim compensation under this part." Is there a statute of limitations, if the worker claims under that section in five years' time?

Ms Murdock: When you look at the latency claims, the gold-dust miners and asbestosis cases and so on, they didn't show up for years. Then there's also the rule under the Workers' Compensation Act, and board policy covers this, that even if you don't make a claim at the board, you can put in a claim.

Mind you, you also have to explain and justify to the

board why you didn't put it in at the time of the accident, but it's there already. I can speak personally to that.

Mr Mahoney: That's all I have.

Mr Offer: I have some questions on this. This is a very different section than now appears in the bill itself. Section 3 of the bill that you are repealing, dealing with section 8 of the act, is extremely different than what you are now inserting. This is not a small change. This is a very real and very different situation.

Ms Murdock: It's the exact same. Yes, in comparison to the section 3 that we're removing—

Mr Offer: I haven't asked the question.

Ms Murdock: Oh, sorry.

Mr Offer: Basically, under the section that you introduced just a few months ago, you are saying that no compensation is payable to a worker if they are receiving compensation under the law of another jurisdiction in respect of the accident. You are taking that out and saying that they are entitled to elect in the event of an accident. So what you are saying is, under the bill that you introduced just a few months ago, if there was an accident, the worker basically would be excluded from compensation in the province if they were receiving compensation from outside.

Ms Murdock: That's what we thought we were doing, but we had numerous groups come before us telling us that it was not clear. They were unsure of the use of the word "compensation" alone, because they thought it might apply to CPP and other kinds of benefits. So what we did in this amendment was we took the language directly out of the act that exists for payment of workers' compensation cases in foreign countries, which is section 9 of the act, and just used it verbatim, only we paragraphed it so it would be a little bit clearer. In section 9 it's all one paragraph, but we broke this one down into sections. Section 9 applies to accidents outside of Ontario; section 9.1 will now apply to accidents inside Ontario.

Mr Offer: Then why do we need this amendment if it's in the act already?

Ms Murdock: It isn't in the act already for accidents that occur in Ontario in terms of receiving compensation from more than one jurisdiction. That's why we put it in in the first place under what you were just reading earlier. According to those people who came before us during the public hearings and made presentations, they felt it was not clear.

So we're making it clearer. In the act, as you can see in your copy, it says, "Where compensation payable by law of foreign country, worker to elect." That is in a foreign place. Now this section is going to be where the accident occurs in Ontario.

1610

The reason I say that is because the board has been interpreting it—and that's why we had to make it clear in this section, because if you look at the act itself and you look at section 8, it goes through and it's "outside Ontario," "outside Ontario," "outside Ontario," "outside Ontario," "business not in Ontario," "outside Ontario," and so on, on the side, the little comments, and when you

get to section 9 the board has been interpreting that to mean "outside Ontario." They have not been interpreting it to mean "inside Ontario." So, section 9.1 will clarify that for board interpretation as well.

Mr Offer: If this amendment is passed we're going to be left with section 8, which is going to talk about a whole bunch of things, section 9, which is going to talk about a whole bunch of things, and section 9.1, which is going to talk about a whole bunch of things. I'm wondering if there isn't going to be some legislative interpretive overlap that is not going to be very helpful in the short or long run. That's not speaking against the substance of what you're trying to do. Legislatively, you've got 23 subsections in three sections of an act, all designed to try to accomplish the same thing. I just don't know if it's going to be terribly clear.

Ms Murdock: Under the existing legislation the decision was made on that one case whereby the woman is receiving moneys from two provinces for the same situation. That's under the way the legislation was interpreted today. This section will clarify that so that this interpretation can never be made again.

The Vice-Chair: Seeing no further discussion, on the government motion on section 3, all those in favour? Opposed? Carried.

Shall section 3, as amended, carry? Carried.

No amendments to section 4. Shall section 4 carry? Carried.

Section 5: We have a PC motion. Mrs Witmer.

Mrs Witmer: I move that section 5 of the bill be amended by adding the following subsection:

"(2) Section 35 of the act is amended by striking out '90 per cent' in each of the following places and substituting '85 per cent':

"1. The third line of subsection 35(4).

"2. The second-last line of subsection 35(6).

"3. The third-last line of subsection 35(11).

"4. The third-last line of subsection 35(13).

"5. The fifth and sixth lines of subsection 35(17).

"6. The eleventh line of subsection 35(17).

"7. The eighth line of subsection 35(18)."

Obviously, the substance of this motion, very briefly, is a reduction in benefit replacement levels from 90% to 85% of net average earnings. This would reduce the unfunded liability by \$4.8 billion. It would still maintain the benefit levels in this province at a higher level than those in neighbouring jurisdictions. It would certainly help, as far as job creation is concerned, in making this province much more competitive, and certainly it would act as an incentive to those seeking to make investments here from abroad, from south of the border and certainly from our own people as well.

This also would address, of course, some of the over-compensation issues, because we know that at the present time there are some recipients who receive 90% of former earnings and really that's more than the net income they were receiving prior to getting WCB.

So that is the reason for this amendment, and I would

hope all people would look favourably at reducing the compensation level to 85%.

Mr Noel Duignan (Halton North): Given the fact that the third party has moved a substantial cut in benefits to some of the most vulnerable people in our society and the fact that given some time to reflect on what they've done—I'd like to move a 20-minute recess.

Mr Mahoney: Mr Chairman, if that's a motion, I'd like to speak to that motion.

The Vice-Chair: For a 20-minute recess?

Mr Duignan: Yes, I move a 20-minute recess.

The Vice-Chair: We have a motion on a 20-minute recess.

Mr Mahoney: I don't know what the game here is, but obviously there's been some decision by the government members that they either want to muzzle the opposition on some of these issues or stall this so that we don't get into the meat of the bill. I don't know what the problem is.

Mrs Joan M. Fawcett (Northumberland): It'll be deemed to have been passed.

Mr Mahoney: We just finished a 10-minute recess, which turned into a 20-minute recess.

Mr Hope: Because who was late?

Mr Mahoney: I don't care why; it did. And this one is a 20-minute recess that will turn into the rest of the afternoon. Frankly, if you want to adjourn the damn committee, let's go home. I got better things to do than play silly bugged games and recessing every once in a while. I really strongly object to that.

Probably one of the most critical issues in the whole bill is the benefit level, and while I strongly disagree with the amendment the Conservative Party has put forward, I strongly also support their right to put it forward, their right to have it debated, and my right as well as all members of this committee's right to speak out on this kind of an issue. You've got the majority, and if you want to recess this committee, I'll tell you, it's going to be a long time before this committee gets any kind of work accomplished around here.

Mr Arnott: I'm very disappointed in this motion put forward by the member for Halton North. As Mr Mahoney indicated just now, we just came back from a recess 20 minutes ago. I don't know why we had that recess, but we did. Now we're into a substantive issue that we want to put forward and the member opposite has indicated he needs time to reflect on it. Well, all of these motions were available to him on Monday, I think, and I hope he's had two days to reflect on it, maybe to read through them. I suppose he has had substantial time to reflect on those issues. So I'm totally against a recess at this point in time and I don't think we need one.

Mr Duignan: It wasn't a motion to adjourn, Mr Chairman. In fact, it was an idea for them to reflect on what they've done here. But I withdraw the request and we'll continue to 4:30.

The Vice-Chair: Okay. On the motion, Mr Mahoney.

Mr Mahoney: I think this is one of the areas where clear lines can be drawn about what parties in this place

would do to effect change in the workers' compensation system. There are fundamentally two reasons that are put forward to reduce benefits. One is to attack the unfunded liability; the other is to take away what's seen as a disincentive to return to work. I would just like to briefly speak about each one of those.

First of all, with regard to the unfunded liability, I ask the simple question: If you had a debt of \$20,000 and you were given 20 years in which to pay it, would you put \$20,000 in a bank account today to cover that cost over the next 20 years? I think the answer is pretty obvious that, no, you wouldn't. There's no need to do that.

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Frankly, while I'm very concerned about the growth in the unfunded liability—depending on who you want to believe, it's either \$1 million a day or \$2 million a day; either one is unacceptable. I'm very concerned about the status of that unfunded liability going down from the current 37%. I think we need a clear financial plan to move it up into 50%, 60%, 70% being funded. I think what happens is you get a little bit of the knee-jerk reaction, because the labour movement on the one side of this issue gets a lot of attention and gets very excited about benefit levels, understandably so, so the business community's got to counter it by getting excited about the unfunded liability.

But we really have to settle down the rhetoric on the unfunded liability. You cannot ignore it as some would have us do. You cannot simply say, "Well, because it's 5% better than it was 10 years ago, everything's okay." You can't do that because of the growth. You have to put in place some changes in this system to be able to responsibly deal with that unfunded liability. Should you do that by taking money away from the people who need it the most, the people who are recipients of the compensation?

In my outreach tour that I refer to from time to time I heard many, many CEOs of large corporations say to me, "We don't want anyone who's injured in our workplace to suffer." In fact, I had a group of them say, "Many of us top up the benefits to 100%."

Mr Hope: You'll be able to prove that, I guess.

Mr Mahoney: I can get you proof of that.

Mr Hope: You can't prove that statement.

Mr Mahoney: Well, I don't know what kind of proof you want, but if you're calling me a liar, why don't you do it? Because I heard them say it. They said it to me in my outreach. They didn't lie to me. The point is that they care, many of them. There are some who don't, and Mr Hope would love to point out on numerous occasions how the terrible corporate agenda is out to simply destroy workers, whether they're injured or not injured—

Mr Hope: Yes, right.

Mr Mahoney: Well, I know you believe that. That kind of intransigence, that kind of nonsense, is the type of thing we've got to get out of government in this province.

Mr Hope: It's fact, and I can prove mine.

Mr Mahoney: It certainly is not fact. The fact of the matter is that I believe all responsible employers would agree they do not want an injured worker, legitimately injured on their work site, to suffer.

I go back to the statements in the W5 program that got a lot of notoriety where I think on six or seven occasions they referred to 90% of income being the benefit level, and it's tax-free. They kept on referring to this tax-free stuff. How many people pay income taxes on their take-home pay? They've already done it. So that's more of the rhetoric. That's more of the extreme I guess what you'd call right side of this debate that goes hand in hand with the left extreme that we just heard from the member opposite about the corporate agenda. That's the kind of nonsense we've got to eliminate.

There's got to be some fairness and some balance put into this, because the object and the principal reason for a workers' compensation system is based on the fact that the workers gave up the right to sue the employer for an accident that occurred in the work site, and in return for that they would get fair compensation, they would get health care, they would get rehabilitation and they would get back to work. If we could just focus on that as the principle, as the basic fairness in a workers' compensation system, it's my submission that we would not want to see that injured worker receive less money. Their mortgage payments don't go down 10%, their car payments don't go down 10%, the tuition payments they have to pay to put the kids through school don't go down 10%, yet alone a further 5%.

The fairness and the justice in reforming this system by reducing benefits in my view is simply admitting that we don't know how to fix the system, so we're just going to carve it out and pay everybody less. Rather than getting at the systemic changes—and this bill does none of that. This bill does nothing to fix a sick, broke and broken compensation system in the province of Ontario. That's why we've been opposed to this bill from day one. We see very little of a constructive nature in this bill.

To then take a bill like this and reduce benefits on top of that would be an absolute disgrace, because it does nothing to improve service delivery to injured workers. It does nothing to improve financial sustainability to the people who pay the bills, to the employers of this province. It does nothing for the people who have to deal in the system on a day-to-day basis, in many cases us.

I just think that thinking you can resolve the unfunded liability by doing this without attacking the number of claims that exist in our system in this province—we're the mother of all workers' compensation systems right here in Ontario, from every aspect. We're the mother of all unfunded liabilities. We're the mother of all in the number of cases. We're the mother of all in the average cost of a file. We're the mother of all in the bureaucracy and the red tape and the length of time and the frustration.

Spend some time, as I know some of you have done, listening to the frustration of injured workers and employers together, and at the end of the day you find a tremendous amount of agreement between those two camps. You don't find the extreme rhetoric that we hear

in this place and with motions like this and with comments like from the member opposite.

On the issue of flat-lining or overcompensation, even Gord Wilson agreed that no one injured on the job should benefit financially from that injury, and Gord agrees that we should establish a system that flat-lines benefits at not more than 90% of take-home pay. I'm not competent to do that. I'm not an actuarial expert, I'm not an accountant, and I try very hard in my job not to be what I'm not. But surely to goodness there is a computer program, there are experts who can determine how we can ensure that a worker is not being paid 92%, 98% or 115% of their pre-injury wage. No one can justify that. It does happen, and I admit that it happens.

We did have an agreement, I think, at the PLMAC process with Mr Wilson and all of the management crew in that process that they would agree to some kind of system that would flat-line it. It's related to taxation and it's related to the length of time that a worker is on compensation in relationship to the length of time that a worker is being paid a full wage for working. So we can make that kind of adjustment.

There is no need—in fact, I would suggest to Ms Witmer that reducing benefits to 85% will not eliminate that on its own. There will still be problems of taxation. Instead of having the extreme cases where you get 115% of their pre-injury wage, they'll get 110%. Is that acceptable to the Tory party? I doubt it. So this does not resolve that problem. We have to find a way. We have to instruct the people who work in the compensation system or the people in the Provincial Auditor's: The government has to come up with a plan—I would suggest the private sector could develop it for us—that would either take a chunk off the last cheque or, however it would work, would flat-line out the payments that are made.

I want to talk just briefly about investment confidence as well. I don't think an investor looking to start up a business—not just invest in some blue chip stocks or something; we're talking about someone who wants to start up a business. If I were looking at starting up a business, I would want to know, is there a worker compensation system in the jurisdiction which I am going into that will prevent the worker from getting injured and suing me and putting me out of business? Because that's what would happen. We've asked employers all over the province, would you like to go back to the tort system? Would you like to face an injured worker in a wheelchair, on crutches, missing a limb? Would you like to face a widow in a court of law? I mean, what did somebody get, \$3 million or \$7 million for spilling coffee in the States? We've seen some of the insane awards that have gone on in the court system, and anybody investing in starting a new business in any jurisdiction would have to be out of their mind to go into that system if there was not some kind of protection against those kinds of exorbitant judgements.

1630

So the question they should be asking is, "Is there a compensation system to which I can contribute a premium that will ensure that my investment is not destroyed or eroded because of a lawsuit?" If the answer

is yes, then the next question is: "How does it work? Is it financially accountable and responsible? Is it fair?" Not, does it give them 85% benefits or 90% benefits? It's just not on. It's just not logical. It just does not follow any serious attempt to reform this system. If we put reforms in place that deal with methods to reduce the number of claims, methods to reduce accidents, methods to increase health and safety issues—you can point at your watch if you want, but frankly I think this is the most important issue in this whole debate.

If we want to put in place systems that will correct the inequities and the problems and cure the malaise and the disease at the Workers' Compensation Board, I maintain there will not be any requirement from any party to reduce the benefit level.

I must tell you that I came to that conclusion from a little different perspective perhaps than some of the members of the government side. I didn't come to it from some ideological bias. I didn't come to it because I was a shop steward who felt I had to support a particular philosophical bent. In fact, when I went out on my outreach tour, I went out—members of my caucus will tell you this—with a view that I probably was going to recommend reducing benefits, that it probably was the way to go in the solution, one of the solutions. And I was absolutely convinced it was wrong. It was morally wrong. There was no justification to it. There were so many other things that need to be done in this system, that should be done—very few, if any, of which we are doing in this particular situation.

Finally, I must comment—I know I'm going on and I'm sorry, but I must comment on the second reason I believe Ms Witmer stated, and that is that we need to eliminate the disincentive to return to work. What we need to do is look at decisions that are made on return to

work being made by qualified health care professionals. We've had many suggestions made to this committee, and it will be interesting to see if the committee is prepared to adopt some of the amendments we're putting forward in our caucus that will advance the involvement of health care professionals from all over the province in the system, and not leave it strictly up to the physicians. It will be interesting to see if they're prepared at some point to deal with expanding the responsibility of board members and of multistakeholders into the system of the Workers' Compensation Board.

If we have good quality decisions backed by good quality health care and by good quality advice, then we will be very clear what's needed to return workers to work. They have to work hand in hand with the employer, with the injured worker, with the health care professional and with the adjudicator at the WCB. I think that can be done, and that is a more humane, a more responsible way to deal with returning workers to work rather than simply saying: "Too bad you got hurt. We're going to slash your payments."

The Vice-Chair: Excuse me, Mr Mahoney. Will you be going on at length?

Mr Mahoney: I might. Why?

The Vice-Chair: We are past the scheduled time of adjournment. Would you like to continue having the floor the first thing tomorrow morning?

Mr Mahoney: I will probably do that, so I'll move adjournment if that's what you'd like.

Mr Hope: What's the speaker's list for tomorrow?

The Vice-Chair: Mahoney, Ferguson and Hope. This committee stands adjourned until 10 am tomorrow morning.

The committee adjourned at 1636.

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et la sécurité au travail, projet de loi 165, M. Mackenzie R-1377**

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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*Murdock, Sharon (Sudbury ND)

*Offer, Steven (Mississauga North/-Nord L)

Turnbull, David (York Mills PC)

Waters, Daniel (Muskoka-Georgian Bay ND)

*Wood, Len (Cochrane North/-Nord ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Arnott, Ted (Wellington PC) for Mr Jordan

Duignan, Noel (Halton North/-Nord ND) for Mr Huget

Hope, Randy R. (Chatham-Kent ND) for Mr Waters

Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Conway

Rizzo, Tony (Oakwood ND) for Mr Klopp

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Turnbull

Also taking part / Autres participants et participantes:

Ministry of Labour:

Murdock, Sharon, parliamentary assistant to the minister

Cohen, Sherry, solicitor, legal services branch

Toker, Mitchell, manager, workers' compensation board

Clerk / Greffière: Manikel, Tannis

Clerk pro tem / Greffier par intérim: Freedman, Lisa

Staff / Personnel: Spakowski, Mark, legislative counsel

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Third Session, 35th Parliament

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Thursday 29 September 1994

Journal des débats (Hansard)

Jeudi 29 septembre 1994

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

Workers' Compensation and
Occupational Health and Safety
Amendment Act, 1994

Loi de 1994 modifiant la Loi
sur les accidents du travail et la Loi
sur la santé et la sécurité au travail

Vice-Chair: Mike Cooper
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Vice-Président : Mike Cooper
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Thursday 29 September 1994

Jeudi 29 septembre 1994

*The committee met at 1015 in committee room 1.*WORKERS' COMPENSATION
AND OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL
ET LA LOI SUR LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

The Vice-Chair (Mr Mike Cooper): We'll be continuing our clause-by-clause deliberations on Bill 165.

Mr Mahoney had the floor when we adjourned yesterday. It's my understanding that Mr Offer has some questions and then Mr Mahoney will do the wrapup for their position.

Mr Steven Offer (Mississauga North): I have some questions with respect to the Progressive Conservative motion and I'm wondering if I might get a little bit of help just before we commence.

This is an amendment to section 5 of the bill, which refers to section 35 of the act. Section 35 speaks to "scale of compensation," but it is referable to death to an injured worker. So I would like if maybe the ministry could confirm that section 35 comes into play when a worker is not injured and living, but where a worker has died. I see that the ministry is—

Ms Sharon Murdock (Sudbury): Compensation to the spouse, yes.

Mr Offer: Yes. So section 35 refers to where a worker is doing work in this province and has died as a result of an accident.

Ms Murdock: Right.

Mr Offer: So my question then is to the Progressive Conservatives: Is it the position of the Progressive Conservatives that, where a worker has died in this province and is survived by a spouse with children, they are in favour of the reduction of the benefits to the spouse and children of a worker in this province who has died?

Mrs Elizabeth Witmer (Waterloo North): The motion that you have before you would mean that all future payments as far as benefits are concerned would be reduced from 90% to 85% once this bill is proclaimed into law.

Mr Offer: Thank you very much for that because section 35 is not the benefits to a worker who has just

been injured and is living and is trying to get returned to work, but we're talking about those terrible, terrible situations where a person lawfully, legally and responsibly doing their job has the most unfortunate of accidents and loses his or her life and the workers' compensation system now provides benefits to the spouse of that worker which are now being sought by the Progressive Conservatives to be reduced to the dependent children of the worker, if that child has to be educated, for the education of that child and indeed if there is a guardian, if there isn't a spouse benefit to the children through a guardian.

So I must say I have some incredible concerns that this amendment would rip their benefits from the hands of the children and spouses of a worker who has died as a result of an accident, and I'll hand it over to Mr Mahoney.

Mrs Witmer: Excuse me, Mr Chair. I'm wondering then if the legislative counsel, who obviously drafted this amendment, has incorrectly done so, because the intention was not to the spouse; it was to the recipient.

Mr Mark Spakowski: I don't think it's appropriate for legislative counsel to discuss in committee instructions we received and motions that are drafted. I'd be happy to discuss with the member what this motion does or what it doesn't do, but I don't think it's appropriate to discuss instructions that we received or may have received.

Mrs Witmer: Could you tell us then what this does do?

Mr Spakowski: It reduces—

Mr Paul Klopp (Huron): What did Mike tell you to do?

Mrs Witmer: Nothing.

Mr Spakowski: This would reduce to 85%—well, throughout that section. The ministry may be able to go through and explain the exact effect, but I think it would reduce the amount of compensation.

Mr Ted Arnott (Wellington): For my purposes I think it would be helpful to get an explanation from the ministry of exactly what compensation benefits are available to the family, the survivors of a worker who has been killed during the course of his or her employment.

Mr Steven W. Mahoney (Mississauga West): On a point of order, Mr Chair: I'm now starting to get confused. We have two amendments. The one before us deals with subsections 35(4), (6), (11), (13), (17) twice and (18). If you read the act, on page 23 of the act, each of those sections as pointed out by my colleague Mr Offer, subsection (4) deals with, "Where a deceased

worker is survived by a spouse...compensation in an amount equal to 90% of the net average would be paid to that spouse," the widow or the widower in that instance. This amendment reduces it to 85%. That's quite clear. Subsection (6) says, "Where there is no spouse" and gets into the kids, it would again reduce it from 90% to 85% where there is not a surviving spouse. So you're dealing with the descendants of the deceased worker in reducing that.

Subsection (11), the same, subsection (13)—all of these subsections deal with an injury that has resulted in a worker being killed and the benefit levels that would then accrue to either the surviving spouses or the offspring of the dead worker.

Mr Arnott: Point of order.

Mr Mahoney: If the Conservative Party wants to withdraw this motion, we'll deal with the other issue—

Mr Arnott: Point of order.

The Vice-Chair: We're on a point of order.

Mr Arnott: Is this a point of order?

Mr Mahoney: Yes.

The Vice-Chair: Yes, it is.

Mr Arnott: You've ruled it as a point of order?

The Vice-Chair: Yes, it is.

Mr Mahoney: Well, it isn't finished because the point of order is you're now asking for the staff from the ministry to explain the impact of your own amendment, which is the most bizarre thing I've ever heard of.

The second amendment deals with subsection 37(1) and clause 37(2)(a) and that deals with reducing 90% to 85% for the worker himself or herself. So I don't think that we need to ask the staff to take time to tell the Progressive Conservative critic or member what their amendment does. That's the most bizarre thing I've ever heard of in committee.

The Vice-Chair: You're right, Mr Mahoney; it's quite clear.

Mr Arnott: I appreciate Mr Mahoney's endeavour and he appears to be wanting to be helpful in this regard—

Mr Mahoney: Absolutely.

Mr Arnott: —but I did want to receive the clarification from them—not necessarily the amendment but the information as to what is the normal procedure that the Workers' Compensation Board follows and what benefits are extended exactly in the case where an individual is killed as a result of his employment and what benefits generally are available to his or her family survivors.

Interjection.

Ms Murdock: Yes. She or he would get the 90% of net monthly benefit. I believe under subsection 35(1) there's a lump sum payment and then there's also rehabilitation allowed under the existing legislation. That's as it stands right now and then there's dependant allowance up until you're 19 or finished school.

Interjection.

Ms Murdock: For the spouse.

Mr Arnott: Okay. For the spouse.

Ms Murdock: If a spouse has to be retrained to enter a workforce in order to earn money, then yes, there's rehabilitation allowed and the dependants until they reach the age of—I think it's 19 or when they finish school.

Mr Arnott: Could I ask how the lump sum is calculated?

Ms Murdock: I'm not a board employee, thank God, but there's a formula that's used and they would determine it based on the earning capacity—no? Well, then, I'll let Mitch answer.

Mr Mitchell Toker: The lump sum award is established in clause 35(1)(a). I'll read it and then explain it:

"(a) compensation payable by way of a lump sum of \$40,000 increased by the addition of \$1,000 for each year of age of the spouse under 40 years at the time of the worker's death or reduced by the subtraction of \$1,000 for each year of age of the spouse over 40 years at the time of the worker's death. But in no case shall a spouse receive a lump sum payment of more than \$60,000 or less than \$20,000."

Mr Arnott: And then the—sorry.

Ms Murdock: And then there's the burial. They also pay for the burial.

Mr Arnott: Okay, the temporary total benefits at present are 90% of the net earnings—

Ms Murdock: It's a different section.

Mr Arnott: —would continue to be paid to the family for what period of time?

Mr Toker: Clause 35(1)(a) and (b) establishes the periodic payments and I'll read that as well:

"(b) compensation by way of periodic payments in the manner and to the extent provided in this section."

There are various subsections in section 35 that describe the periodic payment, so if one were to go down to sub (4), that deals with the case where there is a spouse with children. Sub (5) deals with the case where there is a spouse with no children. Sub (6) deals with a case where there are dependent children and no spouse, and the section goes on.

Mr Arnott: Okay, can I give you another set of example? Say, a 30-year-old worker is killed during the course of employment at his factory. His widow is 30 years old; they have two children. Would the widow receive temporary total benefits at the rate of 90% for 30 years or how long would it last?

Mr Toker: According to section 35, the widow would receive the lump sum according to that formula. She would receive a periodic payment. From the fact situation you've given to me, she would likely fall under sub (4), the spouse with children, and I can read that:

"Where a deceased worker is survived by a spouse and one or more children, compensation in an amount equal to 90% of the deceased worker's net average earnings at the time of injury shall be payable to the spouse until the youngest child reaches the age of 19."

As Ms Murdock mentioned, there are rehab services, there are burial expenses as well.

Mrs Witmer: On a point of order, Mr Chair: I would

indicate to you that we do support this amendment. The point I was trying to make is that this is not retroactive. However, once the legislation is passed, this reduction in benefit level would apply to all individuals who are going to be impacted by the legislation, so maybe that answered Mr Offer, but it's not retroactive.

Mr Offer: It doesn't. I think the Progressive Conservative position is quite clear that you will reduce the benefits to the children of workers who have died in the province and you will reduce the benefits to the surviving spouses of workers who have died in this province, and you will effect an impact in the event of the need for continuing education for the children of workers who have died in this province.

My point is recognizing a whole bunch of issues that we've discussed in this area, the issues around compensation, Friedland formula, unfunded liability and all of those things. It is just a personal feeling that I believe that there are a lot of employers, many, many employers, who would be a little concerned with the reduction of benefits to this level where the worker is not injured but has died.

I just have some real concerns, significant concerns, with the direction and the impact that this amendment will have on those who have to try to put their lives together and go on with their own lives when their mother or father has died in the workplace in this province.

1030

Mr Mahoney: I have a couple of other questions that relate—unfortunately Ms Witmer has left. I don't know if Mr Arnott, not being the critic, would have the answers for them but—

Interjection.

Mr Mahoney: Well, I guess I can try because what's puzzling to me about the first amendment—the first amendment, as Mr Offer has pointed out, is where a deceased worker is survived by a spouse and one or more children, so perhaps I'll just hold for a moment.

Ms Witmer, I just had a couple of other questions for clarification on this amendment. The first amendment, subsection 35(4): Section 35 is comprised of I think about 18 subsections, all of which deal in one way or another with a widow or widower with a surviving child or children and the benefit levels that they get. Your amendment to subsection 35(4) reduces the compensation level from 90% of a deceased worker's net average being paid to a spouse with one child or more to 85%. That's quite clear.

The next part of it, you don't touch. I just wonder if you have a position on it, subsection 35(5), that where the deceased worker is survived by a spouse with no children, they receive 40% to a maximum of 60%. I just wonder, are you intent on changing those benefit levels to a surviving spouse with no children?

Mrs Witmer: Obviously, if we don't have an amendment indicating that we're making a change, we're not making a change. There would be no change in those sections.

Mr Mahoney: It's only for a surviving spouse with

children that the benefits would be cut. A surviving spouse with no children there'd be no change.

Mrs Witmer: The benefit levels in all cases would be reduced. As you know, they have been in many other provinces across Canada as well—

Mr Mahoney: No, but "in all cases" is not accurate, I'm sorry. They're not being reduced for a surviving spouse with no children. They are being reduced for a surviving spouse with children. They're not being reduced in all cases.

Mrs Witmer: We're not touching the other sections.

Mr Mahoney: Okay. I should point out—members would be interested to know as well—that you'll recall at the request of committee members very early in these proceedings, we asked for comparisons of the PLMAC-WCB reform framework and the actual bill, Bill 165. There was an agreement by the parties involved in the PLMAC process that they could not make a decision on an issue such as this.

But they did say—and I would quote from this report—"There was agreement that some recipients of WCB benefits need special consideration. These groups were identified as"—(1)—"survivor and dependant benefits."

There was even an agreement within the business community and the PLMAC process and the combination of labour and management who met with the Premier on this, that on the survivor and dependant benefit issue there needed to be some concern addressed about the impact that this was having.

Quite clearly it's really a most unfortunate situation that these particular benefits would be tackled. The next motion would deal with strictly the injured worker, which is where I always thought the Conservative Party was coming from, and frankly, was quite aghast when I realized, as pointed out to me by Mr Offer, that these seven amendments that we're debating here this morning indeed did deal with the survivors, the spouses, and even more incredulous when I realized that surviving spouses with children were being penalized.

In some kind of strange way, the Conservative Party thinks they should penalize them by reducing their benefits, but if they're not burdened with children then we'll just leave their benefits alone. The logic of that is somewhat upsetting.

Obviously the comments I made yesterday with regard to the overall benefit levels, I'll perhaps speak to the next motion in expanding on those, but just to say that I find this amendment frankly most unfortunate, and in fact if anything, we should be putting an amendment to ask the royal commission to take a look at how we can better help survivors of workers who are killed on the job, rather than cutting their income.

You must realize not only are they losing the dollars that go with it, but they have also lost the support and the leadership that that particular member of the family might bring. That might have been the only working member of the family. In many cases, it probably is. It could require the children to go to work to supplement the family income.

You just don't know the impact that this could have on families, and I would suggest that the third party probably does not know the impact and is just simply doing what is traditional to do when you get into a situation where people are pushing and yelling at you: You just do a broad brush. "So everywhere where it says '90%' in this act, we'll reduce it to 85%," without understanding the impact and who might be hurt.

There would be a lot of people, clearly the most vulnerable people in this situation, the surviving spouse and the surviving kids of a dead worker, who would be damaged severely by this.

I think it's most unfortunate, and it would be my preference that the motion be withdrawn. But failing that, I would certainly ask that when we get to it we have a recorded vote on the issue.

Mr Randy R. Hope (Chatham-Kent): Yes, there is a different shedded light on where the impacts of this proposed change from 90% to 85% takes us in this debate. But I guess I'm not as surprised as Mr Mahoney at the Conservative Party. They've been very consistent in their opinions around workers' compensation. Before we got into this amendment, we were debating amendments that were trying to place value-for-money audits in place in the workers' compensation system. We're now looking at benefit reduction, and I would agree with Mr Mahoney's scenario that it's just wherever you see 90%, hit it and cut it down.

I notice in the Conservative reform package that they've always talked about, their revolution document, they are looking at not only stopping at 85% but to continue that process, because they are looking at ways of continuing reducing the benefit levels and to put it in line with other provinces in this country.

That just sends a message to me that they have been consistent. They've made it very clear that they would reduce benefits no matter to whom. They've also clearly indicated that they would even go further, in their document dealing with the revolution.

They've been consistent in putting forward the value-for-money audit which would probably even reduce benefits even more and affecting those. They're even going as far as not only reducing the benefit levels but, before you even get injured, introducing a copayment scheme where workers would have to pay into a workers' compensation system.

I remember all the presentations that were made before this committee, and I heard the critic, who I believe is very sincere in her thoughts and in her caring about people, but it did not fall in line with the policies that were being put forward by the Conservative Party, and now today we also see it, as part of their amendments that are being introduced, to continually slash at the injured workers, at the families and at the children affected there.

I'm not as surprised to see the position of the Conservative Party as the Liberals are. They've clearly said that they would have a slash-and-burn approach to the workers' compensation system. I don't know why it would surprise you that they would even go after the

spouse who is left as a survivor and the children who will be affected by the death of the parent who was injured in a workplace because it's not even his or her fault that the injury occurred and the death occurred. But they've been consistent. Give them credit. They have been consistent in what they've been saying and they're going to slash and burn.

I'm just wondering as we go even further, keeping in mind what their policy is that they talk about and the amendment that's being introduced, they're saying in the revolution document they're even going to go further in reductions. So 85% is not the benchmark of all ends; it's just a continuous process that will be there.

I'm wondering what the effect would be through the co-worker scheme that they plan on introducing, how much effect would then be to those injured workers' spouses and children who are left at home if not able to pay.

1040

So it does not surprise me. They are consistent. They've been following their agenda, the revolution document. They tried introducing value-for-money audits. They put those amendments forward. We defeated them. Now they're just staying consistent. I know the 85% is not the end reduction factor. They've clearly indicated that in their document, the revolution document, which highlighted a number of points. And not only the reduction of benefit levels; now they're talking about an even further expansion of that program to deal with a co-payment schedule.

I've been involved in the collective bargaining process, and I know that employers always say that our workers' compensation premiums are x amount of dollars and that's calculated in this whole basket of compensation for workers. I'm not talking about workers' compensation; I'm talking about monetary issues when you're dealing at the collective bargaining. They take all that into consideration.

So if you're asking me today do employees actually pay for workers' compensation, yes, because they're not receiving that dollar value in their pocket. It's part of the overall wage compensation package that's being negotiated with an employer, which is taken into consideration by the corporation. So the amendment that's being introduced by the Conservative Party does not surprise me whatsoever.

Now, therefore, for the Liberals. Mr Mahoney, I believe, in all sincerity, has his heart in the right position, but I believe his party is—

Mr Mahoney: It's the brain you're worried about.

Mr Hope: No, I never said anything about your brain. I feel you're a very competent person, okay? I just question some of your policies. But I want to deal with this because I notice they also stayed away from putting an amendment forward to this bill. But let's be honest; they do have a document out there. It's Back to the Future. I know I always keep bringing it up. It's a DeLorean, which means it's out of date, there's only a few of them in existence and most of them are gone and there's a high dollar value to a DeLorean.

But let's talk about some of the direction in which they're saying. We talked about the effects on the injured worker. Well, they're talking about a new scheme also, the Liberal Party. They also talk about the Friedland formula and all benefits, past and future. They are talking about, instead of putting the \$200 amount in place, "Do it on an evaluation, case-by-case scenario."

It is in part of the amendment that we're talking about the reduction. But as we refer to this amendment that the Conservative Party, which has been consistent in its approach by putting this amendment forward and the reduction factor, listening to Mr Mahoney's comments that he made to the amendment that's there, I think it's also important to reflect, as I make my decision on the Conservative amendment, what the Liberals say and what their document presents, and I think that's very important.

They're talking about a 14-day compensation system that the employers pay for, which is already calculated, as I clearly indicated. The workers are already paying for this. Instead of getting into an appeals process and competent people judging a claim, we get into the human resources people, who will now start judging claims versus the workers' compensation people judging a claim.

So there are problems. Human resources' major concern, when they go before a plant manager, is how many sickness and accident days have been recorded in the month, and that's been one of their focuses. They're talking about a cap on how long a period of time that an injured worker can claim from workers' compensation, so it's very important. I find it even amazing. Recommendation 28 of the Liberal Party—and they have recommendations from 25 to 37—

The Vice-Chair: On Mrs Witmer's motion.

Mr Hope: On Mrs Witmer's. Mr Chair, I have to take this all into consideration when I'm going to vote.

Mr Mahoney: Mr Chairman, on a point of order: I would be delighted, if this committee wanted to do a review of the Back to the Future document as part of its legislative agenda, to second the motion if Mr Hope wanted to move it, and we could get into it in a line-by-line, detailed way. I'd be more than delighted to do that, but I thought we were here dealing with Bill 165. Either way, I'm happy.

The Vice-Chair: Mr Hope, could you direct your comments towards Mrs Witmer's motion.

Mr Hope: It is towards Mrs Witmer, because I'm talking openly to people as we try to determine which way we're going to be voting on this amendment.

Mr Mahoney: You don't know? You're not sure?

Mr Hope: It's important while we're examining amendments that we have an open discussion process about issues and where people are coming from.

The Vice-Chair: No. About the motion.

Mr Hope: About the motion, but reflecting on the issue, right? So that's exactly what I'm doing.

If I look at even what they're trying to do, they even made a mistake in Bill 162, which is admitted in there, because they also want to now reintroduce the meat chart that they took out in Bill 162.

They talk about copayment schemes and they talk about how we need the federal government to work with us on unemployment insurance, but I notice that even the federal government is having problems. They're even talking about more drastic cuts on the unemployment insurance.

Mr Mahoney's sincerity around the amendment that is being presented by Mrs Witmer dealing with benefit reduction was very sincere about injured workers, but it fell far short of what their actual policies and their Back to the Future document has presented.

I wish Mr Mahoney would stay consistent. He's criticizing the Conservatives for bringing forward such a drastic amendment; I'm not, because they've been very clear. They said they were going to reduce benefits. They're even going to work on copayment schemes. They're even going to do value-for-money audit reports. They've been very consistent in their amendments that they've put forward. We haven't seen that full direction that the Liberals have been talking about in their amendments.

Just dealing with the impact that's there, there have been some good points brought up. People are being affected, not only with the injury that occurred, the death that occurred, but the continuation of life that has to be, for the spouse who may not have been in a workplace before and now has to venture outside, from a domestic engineer out into the broader workplace; for the children, who are now faced emotionally with the distress of losing a parent through an injury that occurred at work.

Those changes have to be dealt with in a more subtle way, making sure that we take care of our future, which is the children, and to listen to I guess what our hearts are trying to say, that while we're trying to deal with the phantom of the unfunded liability, we're not making draconian changes that are being presented in this bill, which is far-reaching and reaches into a number of other lives, other than the injured worker himself or herself.

This amendment that's being presented by the Conservatives, and future amendments that are talking about benefit reduction, whoever the drafters were just looked for the 90% factor, reduced it to 85% without understanding the consequences that are there faced emotionally.

I don't blame Mrs Witmer. I believe she's a very caring person about people she represents and about injured workers, but the policy which is directed from the corner office does leave her a little bit defending policies that need to be put forward and amendments that need to be put forward in order to stay consistent with the Conservative agenda on the revolution document they've presented.

I know clearly where I stand on the benefit reduction factor and the impacts it has. On this amendment, I guess I would agree with Mr Mahoney, and I don't usually do that too often. I know I've been considered the rebel, and all employers are bad in this province. Not all employers are bad, but I'll show you quite a few who do use the appeal process to prolong claims, and use video cameras and other issues to bear on claims that are out there.

I think it's very important, and I'd ask Mrs Witmer, as

Mr Mahoney has, to consider withdrawing this amendment. It may save a little bit of face in the end. I believe, through the person that she is, hopefully she will consider this option, but I also clearly understand that the corner office does dictate the direction in which they need to proceed with amendments to the WCB.

Mr Arnott: Listening to the discussion this morning has been very helpful. The points that Mr Mahoney has made have been an effort to put forward the view of the Liberal Party.

As the present legislation stands, we're compensating 90% temporary total benefits to the families, the survivors of workers who are killed at the job. Listening to the discussion this morning, one could wonder, why don't we make a special provision for them for 100%? Why not 150%? Why not 200%? How can you suitably compensate the family of a worker who has been killed? That's a difficult issue and there's been a lot of compassionate arguments put forward and it's something I think we all need to reflect upon.

But certainly the position of our party has been that these benefits come from money. The benefits paid out are actual dollars and we've got to be cognizant of the overall financial picture. So it's important that we realize that in spite of our best efforts, what we might want to do, still we have to pay for these benefits with real dollars and those dollars have to come from somewhere.

Mrs Witmer: I do appreciate the discussion that has taken place this morning and I think it's been a very worthwhile discussion. As I indicated at the outset, we are concerned about the financial health of the WCB. We want to make sure that the system is sustainable, that injured workers will continue to receive their benefits, that the money will be there. However, at the same time, we need to address the financial crisis that is embracing the entire system at the present time.

Thus, we put this amendment forward to show that there is a need—yes, it will be painful; it will not be painless—to take a look at the benefit level.

Having heard the discussion this morning around section 35, and I think it's been good discussion, I have heard the concerns that have been voiced by all people who have spoken and, given what's been said, I will tell you that I think it is important to be responsive to those concerns and so I am quite prepared to withdraw this motion at this time.

The Vice-Chair: Thank you, Mrs Witmer.

Okay, that completes section 5. Shall section 5 carry? Carried.

We have a PC motion and it's new section 5.1, and being subsection (37) is not opened in the bill, this motion is out of order unless we can get unanimous consent. Do we have unanimous consent? No. Okay, that's out of order.

Mr Mahoney: Maybe you'd better explain why that is out of order.

The Vice-Chair: Subsection (37) is not opened in the bill.

Mr Mahoney: Oh, I see, it's not open—

The Vice-Chair: In Bill 165, subsection (37) is not open.

Mr Mahoney: But we did open (35).

The Vice-Chair: Yes, (35) was opened.

Section 6, there are no amendments. Shall section 6 carry? Carried.

Section 7, we have a PC motion.

Mr Arnott: I'd like to request a 10-minute recess at this time so that we have the opportunity to confer on this issue.

The Vice-Chair: Okay, this committee stands recessed for 10 minutes.

The committee recessed from 1055 to 1111.

Mr Mahoney: I want to know who's got the sense of humour in legislative research.

The Vice-Chair: I just read that also, "an accord that fell apart."

Mr Mahoney: Just a note of levity, Mr Chair. The report we have from research is to answer some questions. The first question that committee members wanted to know, "Was there an agreement reached by members of PLMAC?" The answer: "Some witnesses spoke of a compromise agreement reached by management and labour as a result of deliberations of the Premier's Labour-Management Advisory Committee. I have been told by the Ministry of Labour that it is more accurate to view the 'agreement' as an accord that fell apart."

Mrs Joan M. Fawcett (Northumberland): Does that mean that a disagreement is an accord that comes together?

Mr Mahoney: There you go.

The Vice-Chair: I think that's quite clear on the actual facts of what did happen. Anyway, on section 7, we have a PC motion.

Mrs Witmer: Yes, I'd like to move that section 7 of the bill be amended by renumbering section 7 as subsection 7(2) and adding the following subsection:

"(1) Section 43 of the act is amended by striking out '90 per cent' in each of the following places and substituting '85 per cent':

"1. The fourth line of subsection 43(3).

"2. The second-last line of subsection 43(9)."

As I indicated in introducing the previous motion, we do believe at the present time that there is a financial crisis at the WCB. We are extremely concerned about the high unfunded liability. As I indicated before, it's somewhere in the neighbourhood of \$11.7 billion and it continues to grow. As a result of Bill 165, it will continue to go upward. We know it'll go to \$13 billion; some have said \$15 billion. I guess it doesn't matter which is which. We simply know we are not going to reach the target of eliminating that unfunded liability by the year 2014, as had originally been determined in the 1980s could be accomplished. We simply aren't going to see that happen.

As a result, in this province there are those who are reconsidering their decisions to invest, expand here. People from outside the province take a look at whether

they want to come in because they have a very high level of unfunded liability. They know that they're going to have to pay for this debt. If they're moving into this province, they have no choice. Even though they did not participate, they will have to unfortunately pay to discharge that debt at some time.

We're seeing certainly lost opportunities. We are seeing a loss of jobs that might have been created if this unfunded liability had not been quite as high as it is today. Unfortunately, it makes this province less competitive. We know that it is affecting the credit rating for this province. We've been told that numerous times. It is added on to our debt, even though the government doesn't want to recognize that it is. It is a source of concern for the business community and it's the business community that creates the jobs.

At the same time, we have to take into consideration injured workers. Obviously, if we don't reduce the unfunded liability, if somehow the system is placed in a position where it would go bankrupt, there would be absolutely no future benefits for injured workers. So we have to make sure that they continue to be protected, that they continue to receive benefit levels as well. There's a fine balancing act that needs to take place and what we need to do is obviously take some measures that will eliminate the unfunded liability.

Our party still believes in and supports the objective of the year 2014. In order to eliminate that unfunded liability, you can't do what the Liberals want to do, and that is nothing and play both sides of the coin—agree with the injured workers, agree with business, agree with labour.

You have to take some tough measures and you have to come out with a position, and our position is that if we're going to eliminate the unfunded liability, we are going to have to do what some of the other provinces in Canada have done and that is reduce our benefit level.

We know that some provinces have reduced it to 85%, some have reduced it to 80%, some have reduced it to 75%. We are suggesting that the most fair thing to do at this point in this province and still meet the objective of eliminating the unfunded liability by the year 2014 would be to reduce the benefit level to 85%. Just for your information, Manitoba did reduce it to 85%, New Brunswick reduced it to 80%, and it was Newfoundland that reduced it to 75%. We are suggesting 85%.

We feel that will give appropriate protection to injured workers, it will ensure that they will continue to get the money that is owed to them and at the same time make this province much more competitive. As a result, we are going to see the creation of additional jobs for people in our province.

I guess that's the goal we're looking at. We want to make sure that people do have jobs. We want to make sure that the injured workers get back to the jobs as quickly as possible, that there are opportunities for them.

We hope that people around the table are prepared to show leadership. We hope that you are truly concerned about reforming the system. You need to recognize there isn't a painless agenda. There going to need to be tough

decisions that are made, they need to be taken now, because if we don't take those tough decisions, we will all suffer—injured workers, business will suffer, jobs will be lost and it will have an impact on the lives of many, many people. So I hope that you will take a look at reducing the benefits from 90% to 85% of net average earnings.

As I say, this still maintains a benefit level in our province that is higher than in neighbouring jurisdictions and certainly it would address some of the overcompensation issues as well and it would reduce the unfunded liability by \$4.8 billion. Therefore, I move the motion that I have.

Ms Murdock: First of all, we've made our position pretty clear, that our party will never be in agreement to reduce benefits from 90% to 85% in this instance. Ninety per cent of net has already been discussed, when they moved it from 75% of gross, in terms of giving benefits to a worker who is employed by a company and gets injured on the job and thinks it's fair.

But my point that I think is really important here is that this section specifically deals with the deeming provision, where we had I don't know how many groups come before us during the public hearings—for those who didn't know it before, and most of us do—and tell us that deeming under section 43 actually has deemed that the person has a job that they don't have, and deemed to be earning money that they aren't getting. So to drop that even more, I just can't believe that it is being suggested.

1120

I also have trouble with the idea of eliminating, and the emphasis is on the word "eliminating," the unfunded liability by 2014. Actually, Mr Mahoney has made the point eloquently a number of times what the reason is in a long-term pension plan kind of thing that you would have zero unfunded liability and total coverage, assets over liabilities, by that time.

Here again, in this amendment, all it says to me is that we've already got Friedland in this bill, so that's \$18 billion paid by injured workers. But on top of that, to eliminate this unfunded liability, which was not created by injured workers, we're going to take another 5% off your net benefits. That's just unacceptable, so I know that I will be voting against this.

Mr Will Ferguson (Kitchener): I'll try to be brief. I think I now know what the Conservative definition of tough decision-making is, and that's a decision that's made that's going to affect everybody else except themselves.

Let's be honest, despite the shortcomings of this bill, and there are some provisions in this bill that I'm not particularly happy with—

Mr Mahoney: Which ones?

Mr Ferguson: The Friedland formula, for example. I'm not happy with that all, Mr Mahoney.

Mr Mahoney: Are you going to vote for it?

Mr Ferguson: I'm not so sure that I am. But if you'll let me continue, please. Despite the shortcomings of this particular bill, I want to tell you something: It's amend-

ments like these that don't make this bill look good; it's amendments like these that make this bill look great, look absolutely great.

I want to tell you that I just think that there's an underbelly to this amendment, which is that everybody on workers' compensation out there is ripping off the system and in order to get costs down, this is the only way we can affect the cost-rate structure. Of course, I think we all recognize that this isn't the only way we can affect the cost-rate structure of this bill. It's, in my view, the Michelin myopic way of doing things.

Michelin in my riding, I want to tell you what they did, a really astute move on their part. Everybody in their plant who didn't have an accident got a turkey, but if you were unfortunate enough to be involved in a work-related accident at Christmastime, you didn't get the turkey. The underbelly to that is no different than the underbelly to the Tory amendment, that somehow it's the worker's fault.

Let me tell you about the injured worker in my riding who is the president of the injured workers' association. He went to work one morning and he climbed up 280 feet of scaffolding. He was a painter by trade and he was painting the ceiling of a church. What he did when he was up there at 9 o'clock in the morning is, he started his job, because the employer asked him to start at that time, and unknown to him, the scaffolding wasn't put up properly, and he and two other workers fell 280 feet. The scaffolding collapsed. That wasn't his fault. He didn't go to work and ask to be injured. He feels fortunate, because the other two individuals were killed on that job as a result of the scaffolding falling.

So I really think that a motion like this really is the greatest tragedy and the greatest insult ever committed against the injured workers of this province and I'm just delighted to be able to be on the majority side of this particular issue to see this motion defeated.

The Vice-Chair: Mr Arnott.

Mr Arnott: The reason I hesitated, Mr Chairman, is because I'm interested in hearing Mr Mahoney's comments on this amendment.

I'm trying to listen to this debate and trying to figure out how the various parties are approaching this issue of reducing overall benefits because, of course, we know—and the parliamentary assistant said yesterday that it's very difficult for her as a New Democrat—in fact, I think she said it's anathema for her to support the concept of the Friedland formula, which of course is a reduction in benefits to injured workers. No matter how you cut it, it's a reduction in benefits to injured workers.

Mr Klopp: It's a tough decision.

Mr Arnott: Exactly. It is a tough decision and I would say to the New Democrats it's especially difficult for you to undertake that sort of a position. It's similar to the social contract—very, very difficult two years ago to recognize that there was a financial problem with respect to the books of the province of Ontario and that something had to be done. The social contract, the reduction in the salaries of the public servants and the broader public sector and the members of the Legislature, let's

not forget us, was a difficult decision, especially for New Democrats to do. I recognize that and I give you credit for those decisions because I think they had to be done.

So we're talking about a difference in degree, I guess. We've heard during the course of these hearings that the unfunded liability, which obviously the Premier accepts even if some individual members in this committee from the New Democratic Party side don't accept that it's a problem. The Premier accepts that the unfunded liability is a problem, that its growth is a problem, the rate of growth is a problem, that it must be addressed. Hence he's brought forward the Friedland formula as a partial solution to that. That's what's happened.

I'm interested in hearing what the Liberals have to say on this because we've seen over especially the last two years that any specific measure that's put forward in the Legislature or in the public domain in terms of ideas, any specific measure to deal with any financial problem in Ontario, the debt problem, whether it's the province's books or the Workers' Compensation Board books, they oppose it. Any specific measure to deal with any financial problem, they're against. Therefore, I suppose we conclude that they're in favour of the status quo; they're in favour of the debt going deeper and deeper and deeper. What else can you conclude? I don't know.

Interjections.

Mr Hope: They just can't figure what side of the fence to be on.

Mr Arnott: Perhaps. Perhaps that's it. I don't know. But I am looking forward to hearing what they have to say on the Friedland formula because—

Interjections.

Mr Mahoney: It's tough being the government when the Canadian people keep swinging at us.

The Vice-Chair: Order.

Mr Arnott: No, I am interested in how they're going to vote on the Friedland formula—

The Vice-Chair: Order. The Chair is having great difficulty in hearing this.

Mr Arnott: —because it is a reduction in benefits.

Again, we heard during the course of these hearings that the unfunded liability is \$11.7 billion. For a period of time it was growing at the rate of \$2 million per day and we hear now that it's been reduced; it's just growing at a rate of \$1 million a day, which I think would shock and appal the average person if they were aware of the implications.

What we've said with this amendment is that, yes, we want to deal with the overall financial problem at the Workers' Compensation Board and we've said that the unfunded liability increasing at the rate of \$1 million a day is still too much and we have to take further measures, tough measures, and we accept that. I remember my speech in the Legislature during the social contract—and I suspect many other members remember that speech that I gave; I'm not sure about that—but what I said was we don't like the concept of cutting, no one likes the concept of cutting, no one relishes the concept of having to make these cuts, but look—

Mr Klopp: Which way did you vote on that?

Mr Arnott: I voted in favour of the social contract at second reading—

Mr Klopp: Not on third reading.

Mr Arnott: Well, I voted in favour of the principle of it at second reading, which is more than the Liberals did. But in my opinion at some point—

Interjections.

The Vice-Chair: Order, please.

Mr Arnott: —financial reality stares you in the face, and in spite of what you'd like to do—

Interjections.

The Vice-Chair: Mr Klopp, you'll have your opportunity later.

Mr Arnott: —if you're the government you've got to do something, and when the unfunded liability is still increasing at a rate of \$1 million a day it's my position that we're not doing enough to address the unfunded liability. So I support this amendment.

Mr Mahoney: I'm delighted that Mr Arnott and perhaps others are anxiously awaiting my comments. You see, I think one of the fundamental problems is that people, particularly I think in our line of work, are somewhat reticent with all the pressures that we have to get too involved in the details of an organization like the WCB. To a degree that's probably good because I think if we had our fingers in more than they're already in we'd probably have greater problems.

But what happens is you tend to look for simple solutions. These are not simple problems. The unfunded liability is not a simple problem. It wasn't created by this government. It was created probably in the last 15 years, maybe a little less, 14, 13 years. The Tories are culpable, our government is culpable, and you people are culpable. We're all responsible for this.

1130

The document that I put out that seems to get so much attention around this table does not bash the current government for the problems at the WCB, but you've got the limos, ladies and gentlemen. Bob Mackenzie's the minister. You're in charge. Under this bill, Bob Mackenzie's going to be solely in charge of workers' compensation, with complete and unabated authority to do whatever he wants with regard to policy directions or compensable levels or anything he wants to change.

Mr Len Wood (Cochrane North): A very capable person.

Mr Mahoney: Well, that may be your opinion. I won't be nasty about someone who's not here to defend himself, and I would not rely on any of you to justifiably defend him either. But I would say that he's going to have a tremendous amount of authority and power. So what we have here is, we have people grasping at straws. You say you want to know the Liberal position. Well, read Back to the Future. It's very clear.

Mr Arnott: You lent me a copy, and I appreciate it.

Mr Mahoney: I gave you a copy. I don't need it back. I know the document. I wrote it.

In that document, we do not look for simple solutions to major problems. Yes, the unfunded liability is a problem, but talk to some people in the financial world about it if it really is the problem that you hear when you hear the rhetoric about, "It's got to go down to zero now," and, "The only way to resolve the unfunded liability is to slash benefits." You know, we forget what this is. This is an insurance program. Is it being run like one? No.

But when Justice Meredith released his royal commission report in 1914 and the government set up a workers' compensation system, it was based on the historic compromise that I have referred to on numerous occasions, and members know it well but it's important to state it again: Workers gave up the inalienable right to sue an employer for negligence or any other cause when an accident occurred in the workplace.

I think in a free, democratic society like Ontario and Canada we consider the right to sue pretty significant, and if you're going to give it up, it should be replaced with something significant. And it is quite significant that a worker would get rehabilitation services and health care services provided, that a worker would get retraining assistance, that a worker would get some form of attempt to return that worker to work either in the pre-injury job or some other form of a job, that a worker would get the right to maintain their dignity and go back to work and be a productive member of society, and, as an insurance program, that a worker would not lose a lot of money.

It is income replacement insurance. It does not replace 100%, and the wisdom on that is based on the fact that the worker does not incur the same expenses in going to work that that worker does in going to a rehab centre or staying at home or looking for other employment opportunities. But that worker does incur expenses, and some of those expenses are covered.

So you've got a fundamental system, the principle of which is sound. As I said yesterday, if I were looking for a place to invest and I had a choice between one jurisdiction that had an insurance program that prohibited lawsuits from putting me out of business and another place that had no such program, I'll tell you where I'd go. I'd go to the jurisdiction that had a compensation system, knowing that I could pay some premiums to ensure that I would not be put out of business by some wacky decision awarding millions and millions of dollars because of an accident.

We've got to remember one thing here: The key word is "accident." Sure there are abusers in the system. There are workers who fake injuries; I believe that. There are employers in the system who strive not to report injuries; I believe that. There are medical professionals in the industry who abuse the system, and I believe that. Fraud and abuse: big problem. Whose numbers do you want?

Diane Francis says it's half a billion a year. Brian King, when he was with the board, said it was \$150 million a year. Pick a number. Pick Diane Francis's number if you want; it's half a billion. Eliminated entirely, what does it do? It takes your unfunded liability from \$11.7 billion to \$11.2 billion. I don't think that fixes the problem. Having said that, I think there should be zero

tolerance for fraud and abuse in the system.

This government and the next government and subsequent governments should do everything they can to ensure that we eliminate as much as humanly possible the fraud and abuse that occurs at the worker level, the employer level, the practitioner level, whether lawyers are involved in it, whether advocates abuse it, whatever. We have to eliminate the fraud and abuse. I couldn't agree more.

I asked some people who are involved in the financial side of this business, "How serious is the unfunded liability?" Their answer to me was, "The serious problem with the unfunded liability is the growth rate." As Mr Arnott has pointed out, the figures bounce around all over the place. What's that old thing about liars figure and figures lie? I don't know. But it's \$1 million, it's \$2 million a day. Whatever it is, we know that it's on a curve that is going through the roof. We know that. It cannot go unabated. It cannot be ignored. But it should not and must not be the only issue we concern ourselves with in looking at major reform in this system.

I give the example when I go out and speak to groups about my report that workers' compensation reform is like putting a glove on in the wintertime. You've got to have all your fingers and your thumb inside the glove and it pulled up over the wrist for it to do the job, to insulate your hand. You can't do it partway. You can't pull the glove half on. You can't leave your thumb outside. You can't put it on and not make sure it's snug around the wrist. The reason I use that analogy is that that's exactly what all governments have done with workers' compensation reform.

I think we have to start at the top if we want to cut the cost, because the real answer to resolving the issue of the unfunded liability is to adopt a long-range plan—it could be 30 years; it could be 50 years; I don't care what length of time it is—and say that we're going to set targets and goals.

The Liberal document says we'll set an immediate goal of 50% funding. We're at 37%. We have a \$6.8-billion asset fund. Think about how long it would take for that to turn into \$10 billion, \$20 billion. As a matter of fact, by the year 2014, extrapolating out—we had an analysis done by our research people on this committee. They showed that by 2014, with reasonable CPI predictions, it would be something in the neighbourhood of \$50 billion in that asset fund by the year 2014.

We can make the assets grow. The facts are, the investment fund of the WCB in last fiscal year returned somewhere around 12%. I stand to be corrected, but it's around that figure. The teachers' pension fund in that same time period earned 22%. Why? Obviously they were more aggressive with their investments. They perhaps involved the private sector in making investment decisions. That's a lot of money; 10% on \$6.8 billion is a lot of money.

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One of our suggestions is that we split the investment fund in three and put it out to private sector money managers who are experts in this and not rely on simply

having—I realize they do some external investment, but the majority of the fund is controlled internally.

There's a standard human reaction that if you're on staff and you're responsible for certain investment decisions, you're going to be cautious. If you're not cautious and you get stung, you're probably going to lose your job. If you're an investment firm, you have many clients, and, yes, you want the best possible return, but there's a different attitude, an attitude that says: "We have a little more expertise. We live in the financial world on an ongoing basis. We can be more aggressive. We have huge sums of money to invest from numerous clients and therefore we can get a better return." I accept that and I think that's the way we should be looking at our investment fund. So we must increase the income.

The Vice-Chair: On the motion?

Mr Mahoney: Well, it is, because the attempt on this motion is to reduce benefits and the justification by the critic for the Conservative Party is that it will eliminate the unfunded liability—or reduce it. She didn't say "eliminate." It will reduce it.

I respect the critic and the honest attempt to get at a problem but I'm suggesting there are many more comprehensive ways to reduce the unfunded liability with a realistic long-term plan. I used the rather simplistic example yesterday that I'll use again, that if you've got a \$20,000 debt and the person you owe the money to says, "I'll give you 20 years to pay it," do you put \$20,000 in the bank today to cover it? The answer's obviously no. So, that doesn't mean it's not a serious debt. That doesn't mean that you don't concern yourself with paying something off on it each and every year and it doesn't mean that you don't have a long-term investment strategy that says, "We're going to generate enough revenue to make sure that this long-term liability is covered." Of course you do all of that, but you look at your income on the investment side and then you look at your expenses.

People have said and accused in the debate around here in dealing with this issue and the previous motion that was put forward and subsequently withdrawn—people, I guess for a lack of understanding of the issue—I don't know; I don't want to be unfair—have tried to attack our position as sitting on a fence or something. We're very, very clear, very specific in that document, that you can increase your revenue but you've also got to decrease your costs. It's no more complicated than a family household. So you've got to decrease the costs, and we make numerous recommendations.

Mr Hope made reference to the two-week self-insurance, voluntary self-insurance. You expressed concerns that someone in human resources is now going to have to make the decision. That's nonsense. The health care adviser to the worker, who could be a doctor under our model, it could be a chiropractor under our model, it could be numerous health care professions under our model, they would make the decision, they would establish, along with the employer, a program that would rehabilitate them and get them back to work as quickly as possible.

Seventy-two per cent of the claims that are filed in the

workers' compensation system are finished with within two weeks. Well, if that's the case, why are we putting them into the bureaucracy, I ask? Why would we not have a system that would allow those 72%, or at least a portion, probably a major portion, to be resolved within the two weeks? Should the worker risk losing income? No.

The employers that I've met around this province have said very clearly to me, "We would rather have Revenue Canada and the Gestapo come into our establishment than to see a workers' compensation inspector." If that's the case, let's give them a chance; let's give the workers a chance to work with the employer to resolve the injury, to cure the injury, to fix the worker, to get them back to work, to establish modified work.

You're going to reduce the number of claims by a huge amount, and if you reduce the number of claims with the average costs—and I know there's dispute over this, but my information is, the average cost is \$24,000 a claim in this province; the largest number of claims in the entire country is in the Ontario workers' compensation system. If you reduce the number of claims, you're going to reduce your costs.

So just a couple of simple ideas that need a lot of work, that need to be looked at by a CEO. We need to change the structure of the board. The list goes on. We cannot continue to tinker with this system and think we're going to resolve the problem.

I have asked people in the business community, "If we reduced workers' benefits to 85%, will it solve the unfunded liability?" The answer is, "No, it will not." And the fact that other provinces have done it: God bless them. The province of Alberta reduced its unfunded liability by \$300 million without reducing benefits a dime, and with a 7% increase in premiums over two years. That workers' compensation system is chaired by a doctor from Ontario, Dr John Cowell, who put in place a new culture in their workers' compensation system. They didn't cut benefits. He didn't believe in it. They didn't see 30% increases in premiums. He didn't think it was necessary. And their unfunded liability on a per capita basis was very close to ours. It has now been reduced dramatically.

Some in Alberta would argue that they've made it more difficult to get a claim through. That may or may not be true, but the fact is, they've changed the culture and they're on their way to fixing the system.

The British Columbia model—very similar story. They put competent private sector, well-trained, actuarially sound people in charge of the system and they're turning it around. They made changes that were very dramatic.

I see, in addition to slashing benefits, the Conservative Party adding to the burden of the workers' compensation system by having them include in a future amendment, the Industrial Disease Standards Panel; the office of the employer adviser; the office of the worker adviser; the Ontario Workers' Compensation Institute, which is a story unto its own; the WCAT; and the health and safety agency, all brought under the auspices of the workers' compensation system. I find that amazing.

I totally agree with the health and safety agency being shut down and a department being established under workers' comp under the direction of a vice-president and working cooperatively with the private sector, but why you would want the workers' compensation system to totally control WCAT is beyond me—you're going to add to the bureaucracy and the cost—why you would want them to control the employer adviser and the worker adviser. If there are two offices in this province that are doing a terrific job, that are overburdened, that are overworked, it's those two offices.

If anything, we could help the workers' compensation system: leave the benefit level where it is, put more resources into the hands of the worker adviser and the employer adviser to try to smooth the system through to get it to an appeals tribunal that is totally, completely separate from the Workers' Compensation to get better and quicker decisions on appeals. That would save us money, and isn't that what we want to do?

I then see motions further on. My report clearly identifies the issue of the older workers receiving and additional workers receiving the \$200 a month. I believe in the justice of that, but until I can find the money I can't support it. Yet we hear the Conservative caucus saying in a motion later on: "The board shall pay an additional \$200 per month to a worker who is less than 65 years old and who is receiving an amount awarded for permanent partial disability...."

So they want to expand the \$200 a month to all the workers and they accuse me of trying to be on the side of injured workers at the same time as being on the side of the employer. What nonsense. That's not how you reduce your unfunded liability, ladies and gentlemen. That's going to add probably in the neighbourhood of \$1 billion to the unfunded liability, by staff estimates, by the year 2014.

Where are we going to find that money? On the one hand, we want to slash benefits to 85%, and the justification is the unfunded liability, without any in-depth analysis of other alternatives, and that's what we in our party have tried to do.

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Let's take a look at fairness, and I think there are enough savings within the workers' compensation system in the bureaucracy alone. I had a person come before our committee in Thunder Bay who is in the bridge repair business and gave a great analogy. He said if you want to repair a bridge, you don't start at the bottom because the foundation will crumble and the whole thing will fall on your head. You start at the top, and we have to start at the top.

This bill goes a little way towards that, but still leaves the power for a year in the hands of the political operatives, and does not expand the board, which is what needs to be done and I know the Conservatives agree with me on this idea, to become a multistakeholder board. There are more people who have a stake in the reform and the success of workers' compensation than just workers and employers. They have a stake, they have an interest, and I think we should draw on the expertise that exists in all of those organizations to improve the functioning at the

board, and stop making this what it really is and that is an issue of empowerment. That's what this is all about. This is strictly power between organized labour and unorganized business.

That's why you get the rhetoric. That's what the health and safety agency has become, nothing more than a mini-Legislature, where the labour caucus on one side with a very dominant vice-chair in Mr Forder, whom I met with earlier this week; delighted to have a tour of the facility, but a very strong individual. The fact is, if you wanted somebody to run your business, Paul Forder might be a good choice because he's sure a strong-willed guy, but you've got a very dominant labour caucus, dominating over a management caucus whose religion is not health and safety. They just want to get through the day. They want to keep their businesses alive. We need to expand the culture of health and safety, encourage training, get major companies to do the training. We'll reduce the cost. If you reduce the quality of the health and safety, if you really want to attack the unfunded liability, cut down the number of accidents that occur. It seems so simple and yet it isn't.

But Bill 208, which was introduced by the Liberal government, was a bill that was designed to try to get at the health and safety issues. What's happened is the agencies become political. It's got totally, in my view, off the proper agenda. The business community has recoiled in fear because of the letters they get from the agency, and the threats they get and the deadlines that are put on them, and they're not cooperating and they're not registering. We have a mess. We have to say to business and labour: "Come on, folks. Let's sit down at the same table, cut out the nonsense and see if we can't improve the level of training that exists for a worker and a supervisor on a job site in Windsor, in Sault Ste Marie or in Ottawa."

Surely to goodness we can teach people to protect themselves better against accidents occurring. Surely to goodness there are some simple messages that we can give to people that will reduce the number of accidents, that will reduce the number of claims, that will reduce the cost of the bureaucracy at the WCB, that will reduce the burden that the business community has to pay.

In wrapping up, I just want to say that we really do need some consistency in trying to attack an issue that should not be and yet is a major partisan issue. It's my hope that if indeed there is through the transition team a group of independent business people put in charge of the WCB, and they make some changes to the fundamental way that board does business and we concentrate on delivering health and safety services to the broader public sector and the private sector, we'll have a real opportunity to do what the Conservative party says they want to do, and that is reduce the unfunded liability.

Let's not forget, however, that the board is showing a negative cash flow in addition to an unfunded liability, that the \$200 a month that the Tories are moving, and I believe the government is moving in a different way but the same effect, will generate additional cash flow requirements in 1995 at the Workers' Compensation Board of \$32 million; an additional unfunded liability

impact of \$250 million in the year 1995 and \$1 billion in the year 2014.

So I just have some difficulty with saying we should reduce benefits to injured workers. Should injured workers be part of the solution? You're darn right they should. They're going to get hit with the Friedland. We're making a motion to eliminate the cap so that at least they are not murdered by inflation, but we cannot reduce benefits. It's the wrong place to look. There are so many options that have to be considered, and I would invite anyone who wants to look at serious reform to get in right up to your elbows into the WCB and look for solutions to that.

I would like as well, when the time comes, for a recorded vote on this particular motion that we'll be voting against.

Mrs Witmer: I appreciate the comments that have been made. I hope that all of Mr Mahoney's plans for dealing with the issue of reforming workers' compensation do indeed come true in his plans to reduce the unfunded liability because, if I go back and take a look at the Liberal record, I'm not terribly impressed.

Mr Mahoney: Neither am I. I'm not impressed with yours either.

Mrs Witmer: It was during the Liberal tenure of government that the unfunded liability escalated from \$2.7 billion to \$9.1 billion.

Mr Hope: How much was that?

Mrs Witmer: It was \$2.7 billion to \$9.1 billion. The Liberals, as you know, introduced a number of changes to the Workers' Compensation Act that actually accelerated the growth of the unfunded liability.

In December of 1985, they introduced Bill 81. They decided to index injured workers' benefits to inflation and this added \$2 billion to the unfunded liability. In July of 1989, we had Bill 162. They changed the compensation for permanent impairment. This added \$1 billion to the unfunded liability.

Then, of course, we had Bill 162. We had a statement made by the Minister of Labour, Mr Sorbara, who said, "Oh, yes, it is going to be revenue-neutral." In fact, I quote: "The overall financial impact of these reforms will be revenue-neutral. They will reallocate resources within the workers' compensation system to compensate for loss of earning ability and help focus our efforts on the priority of rehabilitation."

So that's why I hope that the solutions being offered by the Liberal Party today are much more concrete and will much more effectively deal with all of the problems at the WCB because, at the present time, neither the worker nor the employer is being responded to very well.

I'd like to say as well that we recognize that you don't just reduce the benefit level. In fact, I've been out on the road since 1991 with a PC proposal that has various components to it. We have looked at a solution. We had six points and the business community and injured workers and employees are well aware of our proposals, and what we indicated was this:

(1) We needed to put a moratorium on all new entitlement until there was a plan in place to deal with the

unfunded liability because we felt that to expand coverage or benefits was irresponsible.

(2) We have consistently talked about the need to improve the management of the workers' compensation system and we have indicated that we would like to select someone from the private sector to run the WCB—we do not support the politically appointed chair—and we feel that would make a significant difference as far as running the WCB more like a business.

In fact, we're very supportive of what Alberta has done. In fact, I think that's a Conservative government there at the present time, because they are a jurisdiction that has been able to start lowering their workers' compensation costs and they appointed, as has been said, a businessman and a physician, Dr John Cowell. He's done a tremendous job of cutting the unfunded liability in half. He's running an operating surplus, and he's still delivering the necessary services. In fact, he says next year he's going to be able to reduce the assessments.

But it's the management area where we have long indicated there is a need for change. So that was our number 2 point.

The Vice-Chair: If I may, Ms Witmer, as we have a short lunch, maybe you could continue after lunch.

Mrs Witmer: Sure. Happy to.

The committee recessed from 1201 to 1317.

The Vice-Chair: Mrs Witmer, you had the floor.

Mrs Witmer: Before lunch, I referred to the fact that we, the PC Party, have had a six-point plan since 1991, with suggestions that would improve the level of service being provided at the WCB and also deal with the financial situation facing us as well, the unfunded liability of \$11.7 billion.

I made reference before lunch to the first two points. I indicated that part of our action plan was to put a moratorium on all new entitlements, such as stress compensation, until we did have a plan in place to deal with the unfunded liability.

Our second point was to eliminate the politically appointed chair and fill that position with someone, hopefully a manager or an executive from the private sector, who could manage the system more effectively, and I made reference to the fact that this had indeed happened in Alberta, where there's been a real success story when they brought in Dr John Cowell, who has cut the unfunded liability in Alberta in half. He is now running an operating surplus and they are still able to deliver the necessary services.

Of course I also made reference to the fact that this is a Conservative government that has been able to effectively deal with the situation, and I think that's important to note. Traditionally, Conservatives are good money managers and they still are able to provide a good level of service as well.

Third, we would direct the management to cut costs. We would direct management to develop an action plan. We have certainly spoken—I have—to people within the WCB, many who feel very frustrated themselves with the role they are forced to play within the organization. They do see a lot of waste and they do see ways that the

delivery of service could be improved and things done differently to streamline administrative procedures, so that's why I say we would direct management to cut costs.

I think if you involved the people directly who are part of the administration and asked them for help, you would get some very good advice as to how and why certain changes should be made, and I think in the end we would certainly have a system that operates much more efficiently, that would deal with claims much more quickly and also get injured workers back to work more quickly.

We also would like to take a look at those lifetime pension awards. We realize that needs to be reviewed and addressed, and that's part of the cutting of the costs.

Fourth, we believe that if you're going to have new management objectives, that will require that you control your costs and also at the same time much more effectively serve your injured workers, which as MPPs we all know at the present time isn't being done in a very satisfactory manner.

In our constituency offices, sometimes as much as 50% of our case load is devoted to WCB claimants who simply are not able to communicate, get through to the system, and feel very frustrated. So our very sympathetic staff try to help to facilitate and ensure that their claims are dealt with effectively and also in a more timely manner.

We believe there's a need for value-for-money audits and internal spending controls. I think a good example of the need for this is the fact that it really was ridiculous that the WCB was able to get away with awarding a contract to build a new \$200-million office tower which it didn't need and couldn't afford without first getting government approval or at least being accountable for that decision.

Now we have learned, just a couple of weeks ago, that the new building, which supposedly was to house all of the staff of the WCB—in fact that was the story we were given repeatedly in questions, that this was to bring them all together—can't even accommodate those individuals. We know that at least 45 people and possibly as many as 300 staff are going to be moved to Downsview. What's going to happen now as well is, there is not only going to be the expenditure downtown at Simcoe Place for a new building but we also have another \$7-million renovation taking place at Downsview. We believe there's a need to get the spending under control.

Fifth, we recognize there's a need to do a very serious review. We could enlist the help of the private sector to develop and implement more effective and less expensive ways to retrain, to rehabilitate and to respond to the needs of the injured workers so they can re-enter the workforce much more quickly. That is a very serious undertaking and that's a very serious review that needs to be done as quickly as possible, because the response time at present just is not addressing the concerns those individuals have.

Finally, we recognize there is a need for long-range planning. We need to embrace new directions in terms of our philosophy and our attitudes about workers' compen-

sation. We all know that workers' compensation is not, and it was never intended to be, a substitute for unemployment insurance. It was intended, as we've said time and time again, to financially compensate and physically rehabilitate injured workers until they got healthy and back to work. So again, we need to take a look at, and we've always stressed, the need for a long-range plan. That's why we feel so very uncomfortable with Bill 165, because we feel it is a short-term plan trying to deal with a long-term problem.

Those have been the points we've been taking out to the public. That's certainly what our whole proposal for reform of WCB is based upon. I think it's evident from the discussion this morning that we are willing to sit down and listen to all sides. We're willing to make compromises if compromises need to be taken. We want to consult, we want to listen, we want to reach some consensus with people in this province.

However, we also recognize that part of the proposal would be to reduce the benefit level from 90% to 85%. As I indicated to you, this is being done in other provinces. I mentioned Manitoba, New Brunswick and Newfoundland, where the rates have gone down to 85%, 80% and 75% respectively. Other provinces are taking a look as well. That's not the whole goal to reform the WCB, but certainly it's part of the whole package, where we need to contain our costs and we need to be able to deliver our services more effectively to the injured workers. That's why we've put our proposal here at the present time.

I just want to take a look at the WCB. I want to do a bit of a financial comparison, and it's based on the January 12, 1994, report that was released by the Financial Executives Institute Canada, wherein they did a comparison of workers' compensation boards across Canada. They state: "Ontario is responsible for 70.25% of the accumulated \$15.8-billion debt." What is significant here is the fact that although we are responsible for over 70% of the debt, our workers make up only 39% of the Canadian workforce.

Then they go on to say that Ontario, Quebec, Nova Scotia and Alberta have the highest unfunded liabilities, and of course we know that's changing now for Alberta.

They go on to say that Ontario's cumulative unfunded liability is also very substantial compared to the size of the fund. Ontario's \$11.028-billion unfunded liability is equivalent to 4.4 years of revenue. This has increased significantly since 1990, when the unfunded liability was equivalent to 3.5 years of revenue. Quebec's unfunded liability is equivalent to 2.7 years of revenue.

Then they take a look at the substantial variance in benefit paid per lost-time claim. We all know that this province continues to exceed by far all other provinces. At \$23,500 per lost-time claim, it is well ahead of the second and third provinces, New Brunswick at \$14,900 and Nova Scotia at \$14,600. I think that addresses the need to take a look at how we're managing this system.

Ontario's volume of lost-time claims has steadily declined, from a level of 208,500 in 1988 to 136,900 in 1992. However, during the same period benefits paid per lost-time claim have grown from \$14,710 to \$23,506.

That statistic reflects not only the recession, which makes it harder for injured workers to return to work, but it's also the result of the full implementation of the Liberals' Bill 162, which introduced a dual award compensation system.

As we know, Ontario's average premium per 100 of payroll is \$3.16. Maximum insurable earnings of \$50,800 are the highest in the 10 provinces. We are at a point where the cost to maintain the system is higher than elsewhere. Quebec has an average premium of \$2.24, and the maximum insurable earnings are \$44,500.

Our administrative expense as a percentage of revenues is 14.8%. It's the fourth highest in the country. Alberta was at 19.7%; we know that's come down. Our administration costs, by the way, have been climbing, from 9.9% in 1989 to 14.8% in 1992, so we're going the wrong way. We're not managing our system the way we should. We're increasing the cost to the system.

I think it's clear that the costs of the system in this province cannot continue to be passed on simply to the employer community through ever-higher assessment rates. We really need to take a look at all other avenues for change as well. That's why, as I say, we believe there's a need to do a couple of things. One is to reduce the level of benefits, which we are proposing. Also, we need to take a look at administrative change. Obviously our long-term goal, as well as our immediate goal, needs to be focus on prevention of accidents in the workplace. This is one step in what we see as a long-term plan for reform of workers' compensation, but certainly the end needs to be to ensure that the number of accidents in the workplace decreases.

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Mr Offer: I'm happy to be able to take part in this debate on this particular section, and certainly I think the position made by the Labour critic for our party, Mr Mahoney, on this matter in his opposition was both well said and quite direct. There was one other aspect that I particularly support and that's the fact that we sit here as three parties and it's our responsibility, and one can't lay the blame for the current situation at the WCB solely at the feet of any one particular party.

I think that's a correct approach, I think it's a responsible approach and I think it's an approach that is on the right track in terms of getting this worker's compensation system under some control. Certainly I think that the work done by Mr Mahoney in the Back to the Future document has produced a framework document for the proper approach.

Ms Witmer spoke about her position, and one of the things I found quite interesting was the Progressive Conservatives' continual slamming of the other two parties' position on Bill 81. I don't think a day has gone by when—

Mrs Witmer: Bill 81?

Mr Offer: Which was the indexation. Even in your opening remarks just previous to this, you continued to attempt to remind people that the unfunded liability was a result of the introduction and passage of Bill 81 back in 1985.

One of the interesting things is that I think I might be the only member on this committee who was actually elected in 1985, and I had occasion to look at the Hansard. Now, the Labour critic for the Progressive Conservative Party, Mr Gillies at that time, spoke on this issue quite eloquently and stated, "The direction in which the minister is moving in trying to improve the situation of injured workers in this province is one we can all laud."

He goes on to state the Progressive Conservative position on Bill 81. "After due consideration"—I'm reading from Hansard, by the way, page 2710—"I am very pleased to be able to inform the House our party," the Progressive Conservative Party, "will be supporting Bill 81 and we believe the time has now arrived for annual increases, however determined, to be granted the clients of the Workers' Compensation Board, not as a matter of annual legislative review but as a matter of right and as a result of automatic increases."

But that wasn't all, because there was quite a lineup of Progressive Conservatives.

Mr Hennessy: "People judge a community by how it treats its injured workers and residents. If this bill is passed, I think people will judge the members well.... I support indexing workers' compensation benefits."

Mr Shymko: "I too join my colleagues in supporting this bill."

Mr Barlow: "I will conclude my remarks by commending the minister for this step. It will certainly get my support and that of my colleagues."

Mr Gordon, another Progressive Conservative member: "I consider it a privilege to be able to rise at this time to add my voice to those of the other members of the Legislature who have spoken so eloquently about the necessity of seeing that injured workers benefit from the indexation of the moneys they receive."

Mr Wood: What did Mike Harris say then?

Mr Offer: It moves on. I don't mean to ignore the New Democratic Party. They took part in this.

The point of the matter is this: Mr Mahoney's point is well made and this proves it. The Progressive Conservative Party and Mike Harris cannot continue to perpetrate the myth that they are somehow absolved from the current situation of the workers' compensation system.

Lastly, when one takes a look at the vote on the passage of Bill 81, though not recorded, a place in which Mr Mike Harris was a member at the time, Ms Witmer, the vote was unanimous. Bill 81 passed. I make this point only to say—

Mrs Witmer: We don't object to Bill 81.

Mr Offer: You may make whatever position you may make; that is quite understandable.

Mrs Witmer: On a point of order, Mr Chair: We never have made any comment in the past three days. In fact, today was the first time I actually specifically made reference to Bill 81, and I simply was indicating how the unfunded liability had grown. However, we did not offer our opinion as to whether we were for or against that.

Mr Mahoney: A point of order.

The Vice-Chair: We're on a point.

Mr Mahoney: On her point, I don't know if we could get Instant Hansard quite this instantly, but I would be delighted to review the comments made by the critic for the Conservative Party, who I think, as Mr Offer is pointing out, was in some way trying to lay the growth in the unfunded liability at the foot of the Ontario Liberal Party, which is absolute nonsense. The point that I have made on numerous occasions, which Mr Offer has just reiterated, is that everybody involved in the compensation system over the past—I said somewhere between 13 and 15 years—is culpable, including the party of Michael Harris, Esq.

Mr Arnott: On a point of order, Mr Chair: It seems to me that Mr Offer indicates that perhaps he is the only member of this committee presently who was in the Legislature at that time, and he indicated that there was no recorded vote on Bill 81. On what are you basing the suggestion that it was unanimous?

Mr Offer: All I would do, Mr Arnott, in response, is direct your attention to those proceedings, and you will see that it passed unanimously.

The Vice-Chair: On this point, I think we have a difference of opinion here rather than a point of order.

Ms Murdock: But he said, "On the same point of order."

The Vice-Chair: There is no point. Mr Offer.

Mr Offer: I can't remember where I was when I was interrupted. Oh, yes, I remember where I was.

The Vice-Chair: If I may be of assistance, you were creating controversy. If you could speak to the motion, please.

Mr Offer: I won't belabour the point but just underscore the point that Mr Mahoney made and also explain that everybody in this Legislature in 1985 who spoke on Bill 81 spoke in favour of the bill, all three parties. That's the point, and only point, I wish to make. It bothers me a tad that in 1994 one political party is trying to perpetrate the myth that they did not support Bill 81; they spoke in favour. Their critic, Mr Gillies, indicated in Hansard that it was the position of his party that they shall support Bill 81. That's the only point I wanted to make.

Mrs Witmer: We don't disagree.

Mr Offer: Now you don't.

Mr Arnott: We're still on this amendment, I take it.

The Vice-Chair: We're on the PC motion put forward by Mrs Witmer on section 7.

Ms Murdock: I just wanted to make sure. I was unsure as to where we were in this committee.

Mr Arnott: I just want to indicate that I support this amendment, and I will support it when we vote on it. I listened closely to Mr Mahoney's speech this morning, and it was quite an extensive speech. It turned into really a dialogue about the whole thing that he would like to see changed in the WCB. I think a summary probably of his report to the members, I suppose, the Back to the Future report, which he was good enough to lend me a copy of, and I appreciate that—

Mr Mahoney: Give it to you.

Mr Arnott: —give me a copy, and I still I have it, I suppose, though I can't find it.

But I had said earlier that in my opinion, in my watching of the Liberals over the last two years, every time a specific, concrete proposal is put forward by the government or by our side to address the financial problem in any aspect of government, they vote against it.

Mr Mahoney: Like the social contract; we were opposed to that.

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Mr Arnott: I asked about the Friedland formula and whether or not they would be supporting that amendment. There's a chance we may not get to that part of the bill this afternoon, I'm afraid; I don't know. Hopefully, we will. But whether or not the Liberals will support that particular amendment, I'd be interested in seeing.

He talked about his solutions as to how we should deal with the WCB problem, and I tried to summarize what he was saying. He had a lot of good ideas, really. He said we've got to adjust the management structure such that we could improve the administration of the board. I agree with that completely. We've got to eliminate fraud at the board. The estimates vary, but probably the most conservative estimate is the one that came directly from the board, Mr King, \$150 million, which is an absolute scandal. That should be eliminated if we can do it.

He talked about getting a better return on the investment fund, and he compared the investment fund of the Workers' Compensation Board and the relatively poor return on investment that they received last year to the teachers' pension fund. Certainly, if we could get a better return on our investments, that would be desirable, no question.

He talked about the fundamental problem with workers' compensation; that is, cutting the number of accidents. I would add to this that the other fundamental problem is getting injured workers back to work as soon as possible, as soon as they're physically capable of doing so.

All of those things are desirable. I suspect that over the last four years the government has tried to do all of those things; I suspect that it has. I suspect that when the Liberals were in power they tried to do some of those things too. The fact remains that the unfunded liability is going up at the rate of \$1 million a day in spite of probably your best efforts to do those things in principle, as well as the government's best efforts to do those things in principle.

So what do we do? We can continue to work towards those same objectives, and I would encourage any government to do that. I would think that you would agree with that, Mr Mahoney. But I suspect that it is not going to address the unfunded liability problem to the degree that it should be done.

Previous to this announcement of this bill and the announcement that the government was going to apply the Friedland formula, which of course is a reduction in the pensions of injured workers, we didn't know what the New Democrats were doing. But that's what they've said.

They've said, "We've got to cut benefits, because otherwise we're not going to make a dent in the unfunded liability problem." I agree with that personally. I think our caucus agrees with that. All we're saying is that it's not making as significant a dent as needs be.

I think what the Liberal caucus is saying is that the unfunded liability problem should not be addressed. That's the only conclusion that I'm drawing based on what I've heard today, beyond what's been done. Again, I think this amendment is a direct and substantive effort to address that unfunded liability problem, which most of us accept as a problem. I think you've said that you accept that it is, but you're not prepared to do anything meaningful about it.

Mr Mahoney: I can't just leave that sitting on Hansard, because the honourable member said at the beginning that he listened carefully to the comments and then said that we don't consider the unfunded liability a problem and are not prepared to do anything about it. Nothing could be further from the truth, and I invite you, if you care to, to read the Hansard of what I said today. I absolutely, in fact, recognize the biggest problem with the unfunded liability is its growth, the fact that it's growing out of control, and believe that we have to do a number of things.

You will recall the analogy I used was the hand on the glove in the wintertime to try to keep it warm. That's all part and parcel of the plan. You can't just simply resolve the unfunded liability by slashing benefits. That's my point. That's ridiculous, and it's trying to place the blame for the unfunded liability at the feet of injured workers. I reject that categorically. It is not their fault. It is not their fault that they got injured, and it's sure as hell not their fault that the WCB has grown into one of the biggest monsters of a bureaucracy in North America.

I believe there are things you can do. You brought out some of them: increasing the investment fund is an obvious one; decreasing the bureaucracy; reducing the number of claims; reducing the cost per claim; getting workers back to work as quickly as possible. All of those things collectively, on a long-term basis, be it 20 years, 30 years, 50 years, will address that unfunded liability.

I also believe that it's patently nonsense to suggest that the unfunded liability must be funded 100% now. I've heard that statement made by members of your caucus in speeches in the Legislature, and I think that it's misleading and I think it's dead wrong. The reality is, I used again the simple analogy that if you owe \$20,000 and you're given 20 years to pay it off, you do not put \$20,000 in the bank today to cover the cost; you decide what you need to cover the cost in terms of income and expenses and disposable income and how you pay the debt off, and you embark on a plan to retire the debt.

For us to adopt the principles that I have heard some members of the labour movement say, that we could ignore the unfunded liability, would be equally as wrong as any statement that we should eliminate it 100% today. There has to be some common sense and some balance brought to dealing with the long-term plan of the unfunded liability.

Let me add that the reason given by the Conservative

Party for fixing the unfunded liability, in what I can only assume is a bit of a sock to the injured worker community on their behalf, is supposedly to save this fund for them, because we're being so gracious. Well, that's nonsense. This is an income replacement insurance plan that is to be coupled with rehab and health care and return to work and getting back into the work force. That's what it's about. They paid the price when they gave up the right to sue. Business must remember that. If at any time the business community wants to go back to the tort system to deal with injured workers, well I suggest to you they'd be crazy and they would not want to do that.

So don't, please, put in Hansard any comment or thought that we're not concerned about the unfunded liability. We are extremely concerned about it, but we're not prepared to throw out the baby with the bathwater and say that it's up to injured workers to solve the unfunded liability. There are all kinds of things that must be done to ensure that the hand in the glove in the wintertime stays completely insulated.

Mr Ferguson: Sometimes I have to question whether or not the Conservative Party—and I know you folks here today are the messengers of the party; this isn't directed to you personally—is getting its marching orders from the chamber of commerce or the National Citizens' Coalition, or just who's pulling the strings.

Ms Murdock: Or the ECWC.

Mr Ferguson: It appears to me that you make a suggestion about how to reduce the unfunded liability, but the suggestion is one-sided. It appears to me that in your view the only way to address the unfunded liability is to reduce benefits or put in place some kind of moratorium from the time that one has an accident to the time that benefits would kick in. It seems to be all directed towards the workers in the workplace. I think all of us, or the majority of us sitting in this room today, would agree that perhaps the longest lasting contribution any individual could make towards the unfunded liability is quite simple: not to have workplace-related accidents. That's where it starts for most of us and that's where it ends.

I guess what concerns me about that particular approach is that when this government made attempts through organizations like the Workers' Health and Safety Centre, we just didn't see a whole lot of support coming out of the Conservative Party. In fact, many if not all of the members of the Conservative Party are on record suggesting that the Workers' Health and Safety Centre isn't doing the job it was set out to do, it's too expensive, it's a duplication of service, and the litany of complaints goes on. I would trace most of that back to some of the people who originally sat on the board, and I know there have been some problems with some folks getting along on the board. I would suggest that this perhaps is where most of those problems and criticisms directed towards the agency emanate from.

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But what we're doing here, I think, in this particular bill is solving part of the problem—not the whole problem, but at least part of the problem. We're suggesting that here are a few steps that we think make financial

sense towards the financial health of the board in both the short and the long term, and it puts in place some improvements. Of course, exercising the opposition mentality, as our party did years ago—and, in my view, much better than some of those who are doing it today—we recognize that you oppose everything, support nothing and that's the role you play. I recognize that for what it is.

However, I think what we have here before us today is a much more balanced approach. If we took this particular suggestion to its most logical conclusion, I'm sure that the Fraser Institute would be able to document that reducing benefits and eroding benefits much further than what's even being suggested here would in fact be a net drag on the Ontario economy.

While it's fine and well to suggest that we ought to fight this on the backs of workers, I would venture to guess that the majority of these people who receive benefits are not wealthy individuals; the majority of these people who receive these types of benefits are not individuals who are extremely well off. They are probably, not unlike a lot of Ontarians, living paycheque to paycheque, and the dollars that they receive as their insurance as a result of the accident at work go to purchase the basic necessities of life that a whole lot of other people out there spend their time producing.

So I think it's most unfortunate, but this is really a one-sided view of how to resolve what has not been a problem that's just sprung up overnight but has been a problem that's been around for a long time. Quite frankly, I not only question the political wisdom, knowing that of course this is not going to pass, suggesting such a move, I question the political wisdom of advancing this cause, but I also question the economic viability of telling those who are going to spend dollars that, "We're going to cut you back." That to me just doesn't make a whole lot of sense.

So when we look at this, I think what we have today is a balanced approach that isn't going to be a drag on the Ontario economy and that isn't, perhaps just as importantly, going to be an insult to those who are receiving workers' comp, not because they particularly want to but in a whole lot of cases because they just don't have a choice. They're not able, as a result of a workplace-related accident, to go out and do a particular job or perform the job and the duties that they were performing at one time.

Mr Arnott: I just wanted to follow up on Mr Ferguson's comments. I agree completely that we've got to try to address the fundamental problem of workers' compensation; that's reducing the actual number of accidents and encouraging injured workers as their health improves to get back to work. Clearly, that's the fundamental problem, and every effort that we can make towards that objective I think is something that's desirable.

But I want to give Mr Mahoney the last word on this. I just want to ask him one more time, is the Liberal caucus in favour of applying the Friedland formula to the pensions of injured workers? Are they in favour of that or do they intend to vote against that?

The Vice-Chair: If you choose, Mr Mahoney, you can answer.

Mr Mahoney: When we get to that amendment, we'll find out, but you should read *Back to the Future*. It documents it quite clearly.

The Vice-Chair: Further discussion on the motion by Mrs Witmer? Seeing none, all those in favour of the motion by Mrs Witmer on section 7?

Mr Mahoney: A recorded vote.

The Vice-Chair: All those in favour of Mrs Witmer's motion?

Ayes

Arnott, Witmer.

The Vice-Chair: All those opposed?

Nays

Duignan, Fawcett, Ferguson, Klopp, Mahoney, Murdock, Offer, Wood.

The Vice-Chair: The motion is defeated.

We now have a government motion.

Ms Murdock: I move that section 7 of the bill be amended by renumbering section 7 as subsection 7(2) and adding the following subsection:

"(1) Subsections 43(4), (5) and (6) of the act are repealed and the following substituted:

"Application of subsection (3)

"(4) In applying subsection (3) the following rules apply if the amount determined under clause (3)(b) is not zero and does not consist solely of payments described in clause (7)(b):

"1. The net average earnings in clause (3)(a) shall be adjusted by applying the indexing factor described in subsection 148(1.3), for each January 1 since the day of the injury.

"2. The amount of compensation calculated under subsection (3) shall be adjusted by,

"i. multiplying, for each January 1 since the day of the injury, by the sum of one plus the indexing factor described in subsection 148(1) expressed as a fraction, and

"ii. dividing, for each January 1 since the day of the injury, by the sum of one plus the indexing factor described in subsection 148(1.3) expressed as a fraction.

"Same

"(5) In applying subsection (3), the following rule applies if the amount determined under clause (3)(b) is zero or consists solely of payments described in clause (7)(b):

"1. The net average earnings in clause (3)(b) shall be adjusted by applying the indexing factor described in subsection 148(1.3), for each January 1 since the day of the injury.

"Same

"(6) Subsections (4) and (5) apply in both an initial determination and in a review of a determination under subsection (13).

"Indexing

"(6.1) The amount of compensation payable under this

section in each year, other than a year in which an initial determination or a review of the amount of compensation under subsection (13) is made, shall be adjusted,

"(a) if subsection (4) applied in the last calculation of compensation, by applying the indexing factor described in subsection 148(1) for each January 1 since the compensation was last determined or reviewed;

"(b) if subsection (5) applied in the last calculation of compensation, by applying the indexing factor described in subsection 148(1.3) for each January 1 since the compensation was last determined or reviewed."

Mr Mahoney: You'd better explain it.

Ms Murdock: Yes, that's what I intend to do. It is complex and I understand.

If you remember, on the last day or the last few days of the public hearings, we had the Law Union of Ontario come in, we had legal clinics come in, we had the Injured Workers' Consultants group come in, and IAVGO I think was another group that came in with the same kinds of charts, to show us the calculation of what would happen with Friedland, first of all—that was their premise—but secondly, the effect of Friedland on FEL awards.

1400

When you saw the chart form that they had, upon the determination of the FEL award initially, the two-year review and then the five-year review, the effect of Friedland was almost doubled. You ended up that one was being indexed by Friedland, yet your net earnings were being compared to the marketplace out there, where full indexation was being used to determine what you might earn if you had the job that the board has deemed you to have.

I think it's probably easier to explain it this way: I, as an injured worker, would go through my rehabilitation process and not get back with my accident employer. I'd finish my rehabilitation, go through that process, and then the board would determine that I was deemed to have a job and that I would be earning X amount of dollars. The deemed earnings would be whatever the marketplace out there, which was using full indexation and so on, would be. But the net average earnings under Friedland would be Friedlanded, if you know what I mean. So you would end up that what you were comparing was your net average earnings at the time of the accident, having had Friedland imposed upon it, compared to the wages that you would earn out there in this job but which had no Friedland attached to it. So you weren't comparing two similar things.

What this is going to do—and as I said, it is complex—is the net average earnings will be fully indexed in order to make the comparison at the time of determining what the deemed wages would be and at the time of the two reviews that follow—

Interjection.

Ms Murdock: Okay, just a second.

Ms Murdock: Basically, what it comes down to is that the FEL awards are going to be indexed differently. They will be indexed—basically, one part of the FEL award will be determined on market calculations.

Interjection.

Ms Murdock: Mitch can explain.

Mr Mahoney: Maybe you could start by taking us to the point in the bill where this will appear and what it's replacing and then relate it to the act so that we get some idea of the context. Because, to tell you the truth, I'm a little lost with this, and not because you didn't try.

Ms Murdock: Well, I know what it's doing. If you remember—

Mr Mahoney: Well, that's good.

Ms Murdock: Yes, because that was a concern of mine, that people who had FEL awards, it's bad enough—I've already explained how I feel about Friedland, but I also understand how an agreement is an agreement.

Mr Mahoney: This is like casinos, though. We all hate them, but we're going to build them anyway.

Ms Murdock: But bad enough that that was going to happen, but then to have people who were under a FEL award be affected doubly—Friedland was going to hit them basically twice. So bad enough that you had to have the one, but certainly not the other. So it has to be addressed and corrected, and we think this does it. But I think I'll have Mitch explain how it goes through.

Mr Toker: I'll do my best to try and take people through. I'm not sure I can do a better job than Ms Murdock has done. In taking people through this, I'm going to refer to section 33 of the bill. That is the section that establishes the new indexing formula. I'm also going to be referring to subsection 43(3) of the Workers' Compensation Act, of the act itself, which is entitled "Compensation for future loss of earnings," subsection (3), "Amount of compensation."

I'm going to spend a moment explaining the calculation of the future loss of earnings under subsection 43(3). You'll see there in subsection (3), clause (a) and (b), that there is a formula of sorts that is established in the legislation to determine what a future economic loss or loss-of-earnings amount shall be. The board makes this determination, and it's established later in this section, at various points in time.

Ms Murdock: It's your deeming provision.

Mr Toker: This is the provision that many have referred to as the "deeming" provision.

Mr Mahoney: Clause (b) is the deeming provision, right?

Ms Murdock: Yes.

Mr Toker: That's right. Basically, the calculation is that the amount of compensation for future loss of earnings is equal to 90% of the worker's net average earnings before the injury—that's clause (a)—less the net average earnings that the worker is likely to be able to earn after the injury, and that is clause (b).

Clause (a) is subject to the indexing factor, so that in Bill 165 as currently drafted, once we have established the Friedland indexing formula, that formula applies to that amount.

Mr Mahoney: Which is (a).

Mr Toker: Which is (a); (b) is not attached to any indexing formula in the act at all. It's something that the board will determine on the basis of, and Ms Murdock mentioned this, the labour market, the average industrial wage. While it's not attached to any formula in the act, we can say generally that it will reflect more or less 100% of CPI, because it's going to reflect the average industrial wage in the labour market.

Mr Mahoney: Is that because it's a subjective amount or it's an amount that is not—for example, the net average earnings before the injury, you would know what they are.

Mr Toker: That's right.

Mr Mahoney: So you would have the pay stub that would tell you that.

Ms Murdock: Yes.

Mr Mahoney: But in (b), you wouldn't know. It would be subjective and it would be up to the board to determine.

Mr Toker: That's right, and the board has a list of considerations and factors that go into what kind of job the worker—

Ms Murdock: When he's finished with that, I'll also add to that.

Mr Toker: —may be able to perform post-injury. Yes, to that extent it is a subjective amount. It's not an amount that you can go to point to and apply a factor to and come up with an amount.

Ms Murdock: Yes, it is arbitrary, but also, for instance, if I have been retrained to be a technician, for instance—workers' comp has sent me off to Cambrian College in Sudbury to learn how to be an X-ray technician—then they determine what wage you might be earning if you had the job after you've had the training. They have a list of what that salary would be. That salary list, \$40,000 or whatever it might be, is not determined with any kind of indexing factor attached to it at all. At all. That's how they get that (b).

Mr Mahoney: What I'm having some trouble with is, would this not be a one-time calculation to arrive at the figure?

Ms Murdock: I wish. I mean, that's part—well, no, I don't even wish that. Sorry. I mean, I was one of those people out there fighting against 162. But no. You have an initial determination, then you have a two-year review, and then you have a five-year review.

If you remember, one of the presenters did it far more eloquently than I ever could by stating that, you know, at the initial they determine that you're going to earn \$30,000, but when you were working you were actually making \$45,000. So there was a \$15,000 differential, and you had a 50% PD, so you got \$7,500 as your FEL award, half of it. Then two years later they do the review. Now instead of earning \$11 an hour, you're earning—and you don't have a job, mind you; this is a phantom job—\$13 an hour. So now you've been working at this phantom job for two years and you've gone up in pay by \$2 an hour. So now your FEL award is reduced because you're making more money. And then in five years they review it again and you've now been working for this

company for five years and you've gone up and so your FEL is reduced again. Each time it's reduced, the Friedland formula has another effect over and above the Friedland effect itself.

Mr Mahoney: There's a lot more to this amendment than that, isn't there?

Mrs Witmer: I wonder if we could stand this motion down. Are you prepared to do that?

Ms Murdock: You mean to have it explained more clearly or carefully or what?

Mrs Witmer: Well, I think I'd like to personally have the opportunity to take a further look at the implications.

Ms Murdock: I think we're at a point where that is probably—it doesn't matter what we do. So, yes, I can agree to that.

The Vice-Chair: The committee stands recessed for five minutes.

The committee recessed from 1411 to 1422.

The Vice-Chair: To the parliamentary assistant, do we have agreement to stand this motion down?

Ms Murdock: The whole section has to be stood down and we agree to that, yes.

The Vice-Chair: We do? Okay.

Mr Klopp: Stand down for how long?

Ms Murdock: Till we get to the section where the indexing formula will be discussed.

Mr Mahoney: Is that clear? Until we get to section 33 of the bill, that's the point that we will—

Ms Murdock: Until we get to the indexing formula discussion, we will stand this down.

The Vice-Chair: Thank you very much.

Interjections.

Ms Murdock: Yes, and we'll make sure they're having one. What we have agreed to do during the recess was that the ministry staff will brief all of the staff or MPPs who wish to have a briefing on this and explain it to them in detail, between now and when we discuss it again.

The Vice-Chair: On section 8, we have a Liberal motion.

Mr Mahoney: I move that subsection 51(2) of the Worker's Compensation Act, as set out in section 8 of the bill, be amended,

(a) by adding after "physician" in the first and second lines "or other health care professional;" and

(b) by adding at the end "on a standard form developed by the board in consultation with health care professionals."

First of all, the issue of the other health care professions: My experience in this has been that when we finished our consultations and put out a report and recommended that the OMA and the chiropractors be on the board, we immediately got phone calls from the podiatrists, the psychiatrists, the psychologists, everyone you can think of, saying, "Why not us?" We were looking at the possibility of about a 30-person board if we were going to accommodate it.

I've also recently had a meeting with the health and safety nurses who are actively involved in the treatment and return to work and find that they actually make written recommendations on when a worker is ready to return to work—usually to the physician, but also to the WCB—and have a lot to do with returning workers to work early and quickly.

I think there are a lot of assets in the community that we have not used. Some of them did not come before the hearings that we conducted in the Liberal caucus and it was only after the report was written that they came forward. That's why I've said that our report is not cast in stone, we're prepared to look at changes and amendments within the framework of the basic document. But I think there are a lot of people out there, health care professionals, who can add a lot to the rehabilitation and the early return to work of an injured worker.

I also think that the OMA, from the document they put out, which I thought was really by and large a first-class analysis of the impact on the physicians, was an excellent piece of work. I didn't agree with everything they recommended because there is a reluctance, as you all know, of the family doctor, for example, to make a recommendation that would be, say, counter to the wishes of the injured worker.

Bearing in mind that he or she is the family doctor, think of your own situation; the doctor is going to fundamentally agree with your problem and as long as it's within reason, they don't want to be put in a position of conflict with the patient, with the injured worker whom they have probably known for many, many years, so it puts them in a difficult position to have to make that call. But the OMA has come a long way in saying that they recognize that the involvement of the medical community has got to be greater.

The experience in Alberta that I referred to earlier, where the doctor is the CEO of the board, adds an interesting dimension, because it allows him to still be sort of in the medical fraternity and talk to them, so I think they can do a lot.

Members who were in London will recall the presentation by the professor from the University of Western Ontario. His name escapes me at the moment.

Interjection: Michel Lacerte.

Mr Mahoney: Yes, Michel Lacerte. He really gave us some excellent ideas, I thought, in demedicalizing some of the information. That, of course, is part of the problem as well. I quite agree that we have to be sensitive, that we don't want to be giving out information that heretofore or otherwise might be considered of a personal nature or might be used in some way, in a future hearing, against the worker.

But the principle that we should be sharing medical information between the worker, the employer, everybody involved in making a decision on return to work, notwithstanding the concerns of privacy and everything, is a principle that somehow we have to come to grips with because if you've got a bad employer—Mr Hope is not here, who would tell you that we have many of those; I would disagree with that, but that's a moot point—who's

going to try to fool around with the system, or is going to appeal every single aspect of the application, is going to try to put a wrench in the works, all that kind of stuff, in my view, we shouldn't be cooperating with any information, if we can determine that.

When you've got a good employer—I would use the example of when we went to Sault Ste Marie and we toured Algoma Steel as part of our tour. I think members opposite, and the government particularly, would know, with the level of ownership being among the rank and file of that corporation, and the work that's been done—frankly, I think they were good before, they just ran into serious market problems.

We've got an employer who understands the importance of return to work and rehab and finding alternatives to the job etc, and that's what I would class as a good employer and there are countless of those examples around.

We should be finding a way, whether it's on a standard form, as I've said here, developed by the board in consultation with these health care professionals, of sharing the information that is pertinent to the injury, that is pertinent to the efforts to return that worker to the workplace, whether it be modified work or preinjury work, to get that person back into the workplace, because the ultimate goal—as Mr Ferguson noted earlier, we want to prevent the injury, and I totally concur with that, but once the injury has occurred, then your ultimate goal is to get it resolved as quickly as possible. You can't do that if both sides refuse to trust one another or deal with one another, or more or less put all their cards on the table. That goes both ways.

I respect the concern injured workers have about the unstated penalty that could occur in the issue of refusing consent and all of that kind of thing, but I think if we can come to a consensus where we have a standard form developed in consultation with the health care professionals and that we use as many of the health care professionals certainly as are identified by the government as being health care professionals, I think it will make the system move a lot smoother.

1430

Ms Murdock: This is probably one of the few sections of the bill where all three parties are in relative agreement. I don't think one group came before us—didn't matter whether employer, worker, union, any of the social representatives or agencies that came forward—that did not recommend strongly that it should not be limited to "physician," and even the physicians themselves agreed that it should be more expansive.

Having said that—and this is strange, and it feels somewhat awkward—but when you look at it, our government motion is a little more extensive than the one Mr Mahoney has raised and also the language that we're going to be using in terms of "health professional" rather than "health care professional," and the Tories use "health care practitioner"—I know that sounds strange, but we're using the language out of the RHPA.

We'll be voting against this amendment because of the motion we're going to be bringing forward, but I don't

think there's any disagreement with the fundamental reason all of us are bringing it through. It's just in terms of the presentation of the motion and the extensiveness of the motion, that's all.

Mrs Witmer: We're certainly prepared to support this motion. As has been pointed out, there were numerous health care professional groups that appeared before the committee and indicated the need to bring the act up to date and also recognized the fact that at the present time there are more than just doctors dealing with the treatment of the injured workers. The time has come to acknowledge the roles that are being played by non-physicians within the system, so we would support this, certainly.

Mr Ferguson: I think what's being proposed here by the Liberal caucus is really embodied in the government motion as well. In fact, the government motion goes a little further, because what the government motion says and what this particular motion does not say, is what kind of information should and ought to be shared.

One of those pieces of information that obviously should be shared is the ability of the worker to return to work and any health restrictions that affect the worker's ability to perform his or her duties. That's what's really required.

I think this committee heard from a number of delegations concern expressed about the amount of information that will be shared with the employer and whether or not the worker would be able to consent to it, and what the cause-and-effect relationship would be if the worker decided there was information contained within the medical documentation he or she didn't want shared with the employer—that perhaps might be in there but might be somewhat remotely connected to the injury.

I certainly agree with Mr Mahoney's proposal. However, I think the government motion is just a little more encompassing of what is really needed to resolve some of the concerns that exist out there.

The Vice-Chair: Further discussion? Seeing no further discussion, all those in favour of Mr Mahoney's motion?

Mr Mahoney: Carried.

The Vice-Chair: Oh. Opposed? Defeated.

Ms Murdock: Mr Chair, can I just ask a question on the next one coming up? Are the next two pages identical? There's nothing on the top of the second page that indicates which one is—it's optional, but it doesn't say from whom. They're identical? They are not identical?

Mrs Witmer: No, they're not identical.

Ms Murdock: So they're both PCs. Okay. Sorry.

The Vice-Chair: There is a slight difference in them.

Mrs Witmer: I move that subsection 51(2) of the Workers' Compensation Act, as set out in section 8 of the bill, be struck out and the following substituted:

"Report re return to work

"(2) With the consent of the worker, a health care practitioner who receives a request from the worker or the employer shall provide each of them and the board with the information described in subsection (2.1).

"Information

"(2.1) The information referred to in subsection (2.1) is any information the health care practitioner has about the ability of the worker to return to work and about any health restrictions affecting the worker's ability to perform work on his or her return.

"Health care practitioner

"(4) In this section, 'health care practitioner' means a member of the college of a health profession as defined in the Regulated Health Professions Act, 1991."

Basically, what we were doing was again responding to the concerns that had been expressed about the need to expand and recognize the increased number of health professionals who were working along with the physicians in treating WCB clients. The wording that we have selected here, "health care practitioner," is the wording that is consistent with the Regulated Health Professions Act.

Mr Mahoney: I'm sorry, but I have two amendments in front of me. Are they not identical?

Ms Murdock: No. It says "physician or health care practitioner" in subsection (2) in the second one.

The Vice-Chair: In "report re return to work."

Mr Mahoney: I see. Okay. So we're dealing with the larger-print one?

The Vice-Chair: Yes. Further discussion?

Ms Murdock: Just for the record, our basic reasons are the same as what I stated for the Liberal motion.

The Vice-Chair: Thank you.

Ms Murdock: Let me continue for a few moments.

The Vice-Chair: We could have a small pause.

Ms Murdock: No, small pauses always end up being long pauses.

Actually, all of the groups that came before us made very clear the whole concept of having health care providers beyond physicians make reports. But the other thing that I think the worker community did make very clear, and the labour community as well, was that it was very, very concerned about the confidentiality requirement and, as Mr Ferguson noted earlier, exactly what kind of information was going to be disseminated.

Over and over again, the groups that came before us kept saying it was strictly the restrictions or limitations on the injury that were to be reported under this section and that it should not get into any diagnostic information and, as has been noted already by my colleague, that it shouldn't get into any other kind of medical information or previous injuries or other medical history. Although it says "about any health restrictions affecting the worker's ability to perform work on his or her return," I don't think it's clear enough in terms of what information and how confidential it should be in this PC motion.

I believe that the government motion covers it more thoroughly. As well, I believe the information on the prescribed form is also described more thoroughly in the government motion. So we will be voting against both of the PC motions in preference to our own. Thank you. I have nothing further to say.

Mr Mahoney: Mr Chair, maybe we could stand this down and go to the government motions, since Ms Witmer was called out for a moment, or do you want to send the hook out or do you want me to filibuster?

Ms Murdock: The hook is coming.

Interjection.

The Vice-Chair: Thank you for that suggestion.

All those in favour of Mrs Witmer's motion? Opposed? Defeated.

Mr Mahoney: Are you allowed to vote from the parliamentary assistant's perch?

Ms Murdock: Perch?

The Vice-Chair: Ms Witmer, is it your intention to introduce the second motion?

Ms Witmer: No, I'll withdraw that motion.

1440

The Vice-Chair: On the government motion, Ms Murdock.

Ms Murdock: I move that subsections 51(2) and (3) of the Workers' Compensation Act, as set out in section 8 of the bill, be struck out and the following substituted:

"Report re return to work

"(2) Subject to subsection (3), a health professional who receives a request from a worker or the employer shall provide each of them and the board with a report containing the prescribed information.

"Conditions under which report is required

"(3) A health professional is required to provide a report in accordance with subsection (2) only if,

"(a) the worker consents; and

"(b) the prescribed requirements, if any, are satisfied.

"Payment

"(4) The board shall determine the reasonable costs of the reports provided under this section and shall pay them.

"Reports privileged

"(5) Every report under subsection (2) is deemed to be a privileged communication of the person making it, and unless it is proved that it was made maliciously, is not admissible as evidence or subject to production in any court in an action or proceeding against the person providing it.

"Definition of health professional

"(6) In this section, 'health professional' means a member of the college of a health profession as defined in the Regulated Health Professions Act, 1991."

I think it has been stated fairly clearly that all of the groups that came before us, employers, labour unions and injured workers' agencies, told us that "physician" was too limiting. "Health professional" includes a large number of different types of health care providers and therefore this amendment obviously will reflect that. It's particularly important because of the return to work and the hope of early return to work and being able to get the kind of treatment that might facilitate that instead of through the medical model.

It will appear as "health professional" because of all of

those presentations that were made before us. We did have some question, just for the committee's edification, in regard to the concern, "Why aren't you doing it all through the act?" I wanted to explain clearly on the record that because the other sections of the act are not open wherever "physician" appears, we can't open them. Number one, it's out of order, as we have already discovered a number of times in this committee, unless there's unanimous consent; and number two, the word "physician" is oftentimes, throughout the rest of the act, not the only word that's used to describe the medical modality, so you end up with a myriad of different terminologies.

We're going for the return-to-work provisions. We'll be dealing with this "health professional" and not limiting it to "physician" for the purposes of the section on rehabilitation and return to work, recognizing that we thank all of the presenters who made that notification and brought it to our attention.

The other thing is the "prescribed requirements," as I stated in discussing the PC motion. Some of the presenters were very concerned about what those prescribed requirements were going to be, what the report was going to be made up of, what kind of information was going to be going to the employer and then what kind of information the worker would be agreeing to being sent out, and there was a lot of worry around that. So I think that subsection (3), "prescribed requirements, if any, are satisfied," although it doesn't describe it, "a report containing the prescribed information" will deal only with the limitations of the particular injury and the limitations of the worker in doing his or her job. "Medical," of course, is being deleted for the same reason.

I know the legislative drafters are the ones who tell us predominantly how everything should appear and so on, but when I read it I looked at "reports privileged" and said, "What the heck do we need this for?" It's already covered under section 115 of the act. It's been a while since I read it, but 115 specifically names "physician, surgeon, hospital, nurse, dentist, drugless practitioner, chiropractor or optometrist." That's whom they limit confidentiality to and it's "for the use and purposes of the board only." These aren't, and it is not limited just to those groups. That's why that subsection (5) is in there, just in case any of you were thinking of asking.

And then of course the last, sub (6), is for obvious reasons.

Those are our reasons for presenting the amendment as such.

Mr Mahoney: Could someone answer, please, the issue of subsection (5), "Every report under subsection (2) is deemed to be a privileged communication of the person making it, and unless it is proved that it was made maliciously, is not admissible as evidence...." Who's going to determine that and what would the process be for that?

Ms Murdock: I presume the board would determine it if that issue was ever raised. I presume—

Mr Mahoney: Would WCAT, for example, get a crack at that in some instances?

Ms Murdock: I would say yes.

Mr Mahoney: So it could be internally in one of the appeal processes, within the board, or it could be WCAT or it could be a court?

Ms Murdock: Judicial review. I just should point out here that we took the wording directly out of section 115, except for the sections related to the specific medical practices. I'll read section 115:

"Every report made under section 51"—of which this amendment appears—"and every other report made or submitted to the board by a physician, surgeon, hospital, nurse, dentist, drugless practitioner, chiropractor or optometrist is for the use and purposes of the board only, is deemed to be a privileged communication of the person making or submitting the same, and unless it is proved that it was made maliciously, it is not admissible as evidence or subject to production in any court in an action or proceeding against such person."

So we took that and applied it to this section only, but also did not limit it to those other groups. That predominantly is for the use of the board but it is also going to employers in this instance and workers in this instance.

Mr Mahoney: Just so I'm perfectly clear, it refers to "is not admissible as evidence...in any court in an action or proceeding against" the person.

Ms Murdock: Unless it's—

Mr Mahoney: Yes, unless—would "any court" include WCAT?

Ms Murdock: Well, it's not a court. It's a tribunal.

Mr Mahoney: So if the employer wanted to fight the issue right through to WCAT, it could use this information?

Ms Murdock: Well, it says "or proceeding."

Interjection.

Ms Murdock: So it's "or proceeding," and WCAT would be a proceeding. But also it is privileged communication, period.

Mr Mahoney: Interesting interpretation, and maybe it's a legal interpretation that I wouldn't be as familiar with as you, but I would read that to read that it's "not admissible as evidence or subject to production in any court in an action or proceeding" in that court against providing it. I don't see how the word "proceeding" would then encompass WCAT or other appeal procedures.

Ms Murdock: I'm going to let Sherry Cohen, our legal counsel, respond because I'm missing your point.

Mr Mahoney: I may be reading it as a layperson.

Ms Murdock: I'm missing your point and she isn't.

Mr Mahoney: Okay.

Ms Sherry Cohen: There are really two parts to this provision. The first part deems it to be a privileged communication. It's an absolute privilege, so therefore it couldn't be released in any form.

The second part of it is saying that unless it was proved that it was made with malice, with bad faith, some improper purpose, for example, then it's not admissible as evidence in an action or a proceeding

against the person who has made the report. This would be a disciplinary type of proceeding; this could be an action for negligence.

So with respect to WCAT, they wouldn't be dealing with a negligence action or any disciplinary proceeding against a health care professional. Nevertheless, the report would be privileged and would not be subject to release.

1450

Mr Mahoney: One of the amendments we toyed with was around the issue of worker consent, of adding the words "which shall be not unreasonably withheld." We didn't ultimately do it, but I did want to talk about it. I particularly suggested that because every lawyer I've ever met in my life loves that phrase. "Not unreasonably withheld" generally leads to fees, you see.

The interpretation of that is that I think we would not want to see a situation where a worker could unreasonably just say, you know, "I'm mad and I'm not going to take it any more," withhold consent, and yet I would not want to see the other side of that coin, where the worker has a legitimate reason for withholding the consent and is penalized in some way.

I wonder if the ministry looked at that, if there's any way to somehow put in place either wording or an attitude or an idea that could compel the worker under reasonable circumstances to agree to that information being released; and I wonder if the prescribed requirements that are there in your amendment would then mean that a wording such as "not unreasonably withheld" could be inserted.

Ms Murdock: I'm going to let Mitch respond to the first part of that, but I think I would like to make just a few comments in regard to worker consent.

Employer groups, worker groups, injured worker groups, all of them came in here during the presentations, and I can't think of any one of the presentations that didn't agree with the idea that injured workers want to go back to work. They don't like being off; they don't like getting 90% of net; they don't like dealing with the Workers' Compensation Board if they can possibly avoid it. They want to go back to the job as soon as they're ready.

Probably what hasn't been said often enough during the presentations or in this part is that because this is going to be applied in the early-return-to-work portion and getting people back to work through early intervention, medical modality or otherwise, I can't think of too many workers who would refuse to release the limitations only if it was going to get them on the job a lot quicker. It would be the rare circumstance.

If their doctor was saying, "Look, you can do a job as long as you don't lift your arms above your shoulders. As long as you understand that's your limitation, you can go back and do the job.

If the accident employer has that kind of work for you to do or can accommodate the workplace for you to do it, then you can do that," I don't think there's a worker, in my knowledge of all the workers I've come to know over time, who would not agree to releasing information that was of that nature that would allow them to go back and

do the job. I think that needs to be said.

In terms of the first part of your question, I will let Mitchell Toker answer, if he even remembers what the question is.

Mr Toker: I was going to ask Mr Mahoney if he could repeat the question.

Mr Mahoney: Are you serious?

Mr Toker: Well, I'll try and describe how I understand the question. You were asking whether the prescribed requirements in clause (b) could in any way talk about the consent and the conditions under which consent is reasonably or unreasonably given or withheld. If I've interpreted that question, the answer I would give is, since in clause (a) the bill establishes that one of the conditions is that the worker consents, you could not in regulation qualify that consent and that the prescribed requirements, if any, in clause (b) would deal with the types of information.

Mr Mahoney: So what you're saying is the consent is absolute and there are no conditions that could be put on the consent, such as its being withheld in an unreasonable fashion. I know that you get into subjective arguments and what's the definition of "unreasonable." There have been court cases that have been fought for years to determine that answer.

Ms Murdock: The other point of that being, given that the whole purpose of this section is to get a quick report in a short period of time in order to get the worker returned to work, there would be little or no point to taking this through an appeal process at the board to determine whether or not the worker is unreasonable.

Let's put it this way: If he says, "No, you cannot have that report," then he or she is not going to be in the fast stream on the return to work. He will go through the regular, normal procedures of how the board operates. But for those people who are working within the return-to-work program and go through that, they can get through a lot faster if their doctor or chiropractor or massage therapist tells them that they can do it with limitation.

Mr Mahoney: I agree with that, and I support certainly in principle the expansion to the term "health professional." I support that totally. I think the actual fallout and the implementing of this activity is going to take some time to see if there are some problems, but I don't know any way of doing it other than trying it, and that's not necessarily in relationship to the health professional issue. That's sort of one issue that says, "Let's use more people in the health professions." That is one issue.

The other issue is, how do we release the information? Who gets it? What do we do with it etc? I think the proof will be in the pudding, and the next time we review workers' compensation, which I'm sure is in all our futures at some point, we'll probably have to take a look at the experience that occurs from this.

Ms Murdock: Yes. I agree with you completely, Mr Mahoney. I know Mrs Witmer withdrew the second motion that she had gone through, but I'm really glad that "health professionals" is in here. Because even that

provision where "physician" was mentioned, the board's interpretation of that, should it have appeared with "physician" or "health professional," would have been given some precedence. I'm glad we're just referring to "health professional," which includes physicians. With that, I close my comments.

Mrs Witmer: I have a point of order, Mr Chair: We need to set the record straight. This morning a statement was made, I think by Mr Mahoney, indicating that in other jurisdictions where there had been a reduction in the benefit level, they hadn't cut the benefit level to the survivors. Well, I can tell you in Newfoundland, they were quite heartless. I think it's a Liberal government there, I'm not sure, but they did decrease the benefit level from 90% to 80%.

The Vice-Chair: Mr Mahoney, on the point.

Mr Mahoney: I didn't say that. I don't know if people are lying awake during their lunch-hour dreaming about things I might have said, but I did not say anything of the sort. What I did say is that in the province of Alberta, when the good Dr John Cowell from Ontario

took over that operation, he reduced their unfunded liability by some \$300 million without reducing benefits to anybody. I was not referring to the survivor benefits issue in any way whatsoever, so I wouldn't want words put in my mouth.

The Vice-Chair: We will have a review of Hansard on that point.

Mr Mahoney: Go right ahead. There's probably a movie coming out about it.

The Vice-Chair: Is there further discussion on Ms Murdock's amendment? Seeing no further discussion, shall the motion carry? Carried.

Shall section 8, as amended, carry? Carried.

Seeing as it is 3 o'clock and the end of our scheduled allotment over the intersession, hopefully the members will come back and we will discuss Bill 165, and not which political party could best fix the system.

This committee stands adjourned to the call of the Chair.

The committee adjourned at 1500.

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et la sécurité au travail, projet de loi 165, M. Mackenzie R-1403

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Président: Vacant

***Vice-Chair / Vice-Président:** Cooper, Mike (Kitchener-Wilmot ND)

Conway, Sean G. (Renfrew North/-Nord L)

***Fawcett, Joan M.** (Northumberland L)

***Ferguson, Will,** (Kitchener NDP)

Huget, Bob (Sarnia ND)

Jordan, Leo (Lanark-Renfrew PC)

***Klopp, Paul** (Huron ND)

***Murdock, Sharon** (Sudbury ND)

***Offer, Steven** (Mississauga North/-Nord L)

Turnbull, David (York Mills PC)

Waters, Daniel (Muskoka-Georgian Bay ND)

***Wood, Len** (Cochrane North/-Nord ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Arnott, Ted (Wellington PC) for Mr Jordan

Duignan, Noel (Halton North/-Nord ND) for Mr Huget

Hope, Randy R. (Chatham-Kent ND) for Mr Waters

Jamison, Norm (Norfolk ND) for Mr Ferguson

Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Conway

Rizzo, Tony (Oakwood ND) for Mr Waters

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Turnbull

Also taking part / Autres participants et participantes:

Ministry of Labour:

Murdock, Sharon, parliamentary assistant to the minister

Cohen, Sherry, solicitor, legal services branch

Toker, Mitchell, manager, workers' compensation board

Clerk / Greffière: Manikel, Tannis

Staff / Personnel: Spakowski, Mark, legislative counsel

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Third Session, 35th Parliament

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Wednesday 2 November 1994

Journal des débats (Hansard)

Mercredi 2 novembre 1994

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

Workers' Compensation and
Occupational Health and Safety
Amendment Act, 1994

Loi de 1994 modifiant la Loi
sur les accidents du travail et la Loi
sur la Santé et la sécurité au travail

Chair: Mike Cooper
Clerk: Tannis Manikel

Président : Mike Cooper
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Wednesday 2 November 1994

Mercredi 2 novembre 1994

The committee met at 1621 in committee room 1.

ELECTION OF CHAIR AND VICE-CHAIR

Clerk of the Committee (Ms Tannis Manikel): As you're aware, Bob Huget is no longer a member of this committee, so we need to elect a new Chair.

Ms Shelley Martel (Sudbury East): I would nominate Mike Cooper for Chair.

Clerk of the Committee: Are there any further nominations? Seeing none, I declare the nominations closed and Mr Cooper elected as Chair.

The Chair (Mr Mike Cooper): I want to thank the committee members for their support. At this time, we'd like to elect a Vice-Chair.

Mr Paul Klopp (Huron): I'd like to nominate Len Wood.

The Chair: Further nominations? Seeing no further nominations, Mr Wood, will you stand for the position?

Mr Len Wood (Cochrane North): Yes.

The Chair: Mr Wood will be the Vice-Chair.

Now we can get this committee back to work.

COMMITTEE BUSINESS

Mr Daniel Waters (Muskoka-Georgian Bay): I move that a subcommittee on committee business be appointed to meet from time to time, at the call of the Chair or at the request of any member thereof, to consider and report to the committee on the business of the committee; that substitution be permitted on the subcommittee; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that the subcommittee be composed of the following members: Mr Cooper, Mr Wood, Mr Offer, Mr Turnbull, and that any member may designate a substitute member on the subcommittee who is of the same recognized party.

The Chair: Discussion on the motion? All those in favour? Opposed? Carried.

WORKERS' COMPENSATION
AND OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL
ET LA LOI SUR LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

The Chair: For the committee members, there are

two new motions before you. One is MS-4, a government motion, and that's to replace the one that was stood down in section 7, motion number 14. Ms Murdock, are you withdrawing the one that was stood down?

Ms Sharon Murdock (Sudbury): Yes, and replacing it with this. There is only a minor change in subsection (6.1) for clarification purposes, to match with other parts of the bill. But as we stood it down, can we deal with it—

The Chair: We'll take care of that when we go back to section 7.

Ms Murdock: That's what I was going to suggest.

The Chair: We also have a new Liberal motion which will go before number 19 in your books, numbered 19A.

We finished at the end of section 8, and that section was carried, as amended. Now we'll be going to section 9 and the Liberal motion.

Mrs Joan M. Fawcett (Northumberland): I move that section 9 of the bill be amended by adding the following subsection:

"(1.1) Subsection 53(2) of the act is repealed and the following substituted:

"Early assessment

"(2) Within 45 days after notice of an accident under section 22 is filed, the board shall assign a vocational rehabilitation adjudicator for a worker who has not returned to work. The adjudicator shall promptly contact the worker for the purpose of identifying the worker's need for vocational rehabilitation services."

I further move that subsection 53(2.1) of the Workers' Compensation Act, as set out in subsection 9(2) of the bill, be amended by striking out "Promptly after contacting the worker" in the first and second lines and substituting "Promptly after the worker is contacted."

I bring this to everyone's attention because we all know that the main object is to get injured workers back to work—we all want that to happen—and we know too that the vast majority of the workers want to get back to work. In many cases, however, a worker who has been injured believes they will be able to return to their original job, and they go through all their recuperative measures, whether it be in hospital or recuperating at home, with the real notion that they will eventually get back to their original job, but sometimes this doesn't happen.

As has been pointed out to me on many, many occasions, because the worker has not designated in the

beginning that they would eventually like vocational rehabilitation, their file can be closed. This has happened to many. They really believe they can get vocational rehabilitation, but when they go back to apply, they are told their file has been closed and then everything is delayed, they have to re-establish, and many of them are very, very frustrated around this.

It was a thought that we could put in the act that 45 days after notice of an accident, when the board assigns and they come back, that it isn't just any adjudicator but it is a voc rehab adjudicator who would review this injured worker's case so voc rehab can start immediately and the injured worker can get back into the workforce as soon as possible.

1630

This has been pointed out to me and I just bring it to your attention. I hope you will agree that it's a minor change, just ensuring that an injured worker will be dealt with by a vocational rehabilitation adjudicator if 45 days have passed and it looks like they are not going to be able to go back to their original job. Some workers have gone back to work, tried it and found out they can't. Once they go back to work their file is closed, and it really becomes a mess.

Mr Gary Carr (Oakville South): I have a question on the timing, the 45 days, where that came from.

Mrs Fawcett: That comes from the act itself, I believe. Yes, it's in the act.

Ms Murdock: As to subsection 53(2) of the current act, you've made your point about it having been designated, but I have some difficulties with the concept of designating a rehab adjudicator when the board's administrative and operational methods would be infringed upon in terms of having it be designated. The act under subsection 53(2) and the new provision we're going to be adding to it where the board contacts the employer following the call to the worker and arranges the kind of voc rehab the worker needs we think would cover it, and we would not want to get into the operational side of designating who specifically would call. So I would not be in favour of the first part.

The second part of your motion—well, obviously, if we don't support the first one—

Mrs Fawcett: It follows, if the first one is passed.

Ms Murdock: Actually, I don't see how it follows because I don't see any difference. Maybe you could explain "promptly after contacting the worker" being changed to "promptly after the worker is contacted."

Mrs Fawcett: I think it was just to facilitate the English of it all.

Ms Murdock: I wondered.

Mrs Fawcett: I understand what you're saying but, unfortunately, that isn't what happens in real life. For some reason, sometimes adjudicators who are not vocational rehabilitation adjudicators don't see the necessity of a person being reassessed and going forward, so these people do get lost, and many of them do, because their file has been closed. They thought they were able to go back to work, they did in fact go back to work and then couldn't cope. Then they really do get lost in the shuffle.

All I'm saying here is that when they come back into the system, it be a vocational rehab adjudicator who looks at and assesses the fact that they cannot do their present job.

Mr Ted Arnott (Wellington): I can support the intent of what Mrs Fawcett is proposing. I just want to ask the parliamentary assistant and perhaps her staff to answer a question. Does she perceive that this will increase the cost of administration at the board if this amendment is adopted?

Ms Murdock: That's what I was going to explain to Mrs Fawcett. When a claim gets to the voc rehab level, when the worker is eligible for vocational rehabilitation, your claims adjudicator passes it on. If the file is closed, yes, a claims adjudicator would be the one who would contact you, but if it is seen at that level, and it would be determined at the claims level if the file has been closed, then it would be passed on to the appropriate worker, and if voc rehab was the one, it would go to the voc rehab worker.

I know only too well, having advocated on behalf of injured workers for four years, that it doesn't work all the time and that the deeming of being uncooperative closes a file and then it goes back to claims and so on and starts all over again. But your provision would not change that.

Mrs Fawcett: If a worker believes they can go back to work and they go back to their original job, does that close the file?

Ms Murdock: Goes back to their original job? If they go back to their original job, they're no longer on voc rehab, they're no longer on a worker's compensation claim, unless they reinjure themselves; then it's a new injury, or a reinjury.

Mrs Fawcett: But when they go back, in three or four weeks they find they can't do that job, so they need to be retrained. But the file has already been closed, so it does not get sent to a vocational—

Ms Murdock: You're right. They'd have to call and have it reopened, and when it was reopened and determined that they were at voc rehab level, they would go back into the voc rehab section of the board. That's the way it's supposed to work now.

Mrs Fawcett: I know, and it doesn't.

Ms Murdock: But your provision won't change that. If you have a closed file, regardless of the reason, and you call the board because you can no longer do your original job, it will go into claims first, because the file has to be reopened before it then goes to the appropriate department.

Mrs Fawcett: What I'm saying is that when they go back after the 45 days, it goes to a voc rehab person who knows something about what can happen to someone who has been injured and is not able to carry on that job and needs retraining. I'm saying that sometimes some of the people on the front who make the initial contact don't realize.

Ms Murdock: But if you have an injury, after 45 days of your being off, you're going to get called for an assessment in terms of your voc rehab possibilities or whatever your assessment will be. This does not address the concerns of someone who goes back and finds they

can't do the job and then comes back to WCB. Do you know what I'm saying?

Mrs Fawcett: I do, but I'm just wondering—

Ms Murdock: Yours won't resolve it either.

Mrs Fawcett: Then we'd better get something that will resolve it.

Ms Murdock: We have to get fewer workers injured in the province and then we won't have to worry about voc rehab.

Mrs Fawcett: Meanwhile—

The Chair: Seeing no further discussion, all those in favour of the Liberal motion? Opposed? Defeated.

Mr Steven W. Mahoney (Mississauga West): Could I ask for clarification on government motion MS-4, which deals with the private vocational schools and the trainees? I particularly want to ask some questions of the parliamentary assistant and the staff around this, because it has to do with the setting of rates for these unpaid trainees.

I think there was all-party agreement on the amendment; that was not a problem. But there's something that has been missed. The amendment states, "The placement host shall be deemed, for the purposes of this act...not to be an employer of the trainee," so they don't have to take on the liability and the rates are then not set based on that employer's rate or wage level. It says, "The training agency shall be deemed, for the purposes of this act...to be an employer of the trainee and the trainee shall...be a learner employed by the training agency." All of that's fine. This was actually arrived at in consultation with the presenters who came before us, and the people in the industry basically agree with it.

The problem has arisen that no one at the board can tell these people how the rates are going to be set. The insurance companies are saying they're afraid that they're going to be deemed to be the employer and the rate will be set based on their wages, and of course they're not even in WCB. The training agency is saying it's going to be all over the map, that depending on what job they're sent back to train for, it would be a different level in a steel plant than it would be in a day care centre or whatever the placement host is.

1640

They're unable to get clarification. I know there's some information Ms Murdock and Mitch Toker have got about this, but I'd like to see either clarification or some kind of further adjustment or amendment that would ensure there's either a flat rate established to determine the rates, or that if it's going to be the training agency—I had trouble wrapping my head around this too, but once you realize the problem, it's an unclear and unstated thing in the act, and they're all quite worried about what those rates are going to be.

The Chair: Are you talking about amendment 6?

Ms Murdock: MS-4, section 2.1 of the bill.

Mr Mahoney: Yes, it's number 6 in your package.

The Chair: That was carried.

Mr Mahoney: Yes. I'm asking for clarification. It's not particularly on the amendment but on what's not in the amendment, but it's all around that amendment.

The Chair: Ms Murdock, if you choose.

Ms Murdock: Sure. In discussing this, first of all, because trainees are unpaid while in the training position, the board pays minimum wage if they're injured. Their classification rate of pay, 90% of net, is based on minimum wage times the number of hours they work, depending on what their training position is. That's the first thing. Second, there is discussion at the board right now about how they're going to deal with whether the agency is the one that's going to have to determine if they're in a high-risk placement or a clerical placement where there is less risk of injury and so on, that kind of thing.

The flat-rate issue we discussed earlier would not be dealt with in the legislation amendment; it would be dealt with either by regulation or by a policy direction at the board.

I think those are the two questions you asked.

Mr Mahoney: So if it's high-risk, it would not be minimum wage, it would be a separate flat rate that would be determined?

Ms Murdock: No. The benefits that would be received by the injured trainee would be based on minimum wage regardless of whether they were in a high-risk business or not. That's the way it is being done now.

Mr Mahoney: So in essence that is a flat rate.

Ms Murdock: Yes, but the premium that would be charged to the agency—right now the board has not determined that. Your concept of a flat rate is being discussed. That's one of the areas they're going to do. But it could be done either by regulation or by a policy directive at the board, so it doesn't have to be done by amending that section.

Mr Mahoney: Would you address the concern that very often there's not a training agency in the middle, so to speak? It might come right from the insurance company putting the people out into some training situation without going through a training agency. I don't think we want to necessarily force a middleman, middle person, to be put in place if they can deal direct.

Ms Murdock: I know what you're saying. Our motion dealt with private placement agencies, of which there are only 32 in the province. It does not deal with insurance companies who directly place, but there is a section—just a minute; I can't remember which one it is. "A member of a prescribed class who provides vocational or other training," so if they are a member of the prescribed class, they would come under this section, and I don't know if insurance companies would. I'd have to find that out for you.

Mr Mahoney: They don't want to be designated as the training agency. They simply want to allow the person to go. They don't want to get involved in filling out the forms and taking over the role of a training agency, but they also don't want to be put—

Ms Murdock: Well now, excuse me, if you're going to send people directly there and they want the privileges of this section—

Mr Mahoney: No, no.

Ms Murdock: —they should be filling out the forms, I would think.

The Chair: Hopefully, this is cleared up. We are on section 9 now.

Mr Mahoney: We're on Bill 165 and there are questions that have come forward. I was under the impression that we had some answers for them, so the purpose is to put it on the record to clarify it. That just deals with the problem.

Ms Murdock: Mr Toker might explain the concern he has. They aren't classified as an agency, as I see it.

Mr Mitchell Toker: I've heard Mr Mahoney raise three issues and I'll try to address each issue.

There is the issue of what benefits the trainees would receive. To elaborate on what Ms Murdock said, when paying temporary disability benefits, the injured unpaid trainee would receive the equivalent of—it would be based on the Ontario minimum wage: 90% of the Ontario minimum wage times the hours. If it got to the point that they had to establish a wage loss award, that would be based on the average earnings of workers employed by the same placement employer. In other words, the board would look at what a tradesperson the trainee was training for was earning, if it had to establish a wage loss.

Mr Mahoney: And that's paid by the board if there's a wage loss.

Mr Toker: And that's paid by the board.

With regard to the second issue, the assessment rate, as Ms Murdock said, the board hasn't established what the assessment rate would be yet. Nowhere in the Workers' Compensation Act are specific assessment rates for rate groups established, so it's unlikely that the government would want to carve out that one exception for training agencies. The board is looking at how it will establish assessment rates, and it has identified that, from a procedural point of view, it would be quite problematic to charge an assessment rate based on the rate group for the placement host, because you'd have hundreds. So they are looking at possibly establishing one training agency assessment rate.

Mr Mahoney: Are they looking at the possibility of not establishing a rate at all, given that this was an area that was heretofore covered by the board and there was not a specific rate charged in the past?

Mr Toker: No, because what we're doing in this amendment is establishing that the training agency steps into the shoes of the employer for purposes of workers' compensation assessment rates, so an assessment rate will be established.

Mr Mahoney: I'm sorry to belabour it, but in many cases there will not be a training agency in those shoes. So who then—

Mr Toker: And that leads up to your third question: Who are we talking about when we say "training agency"? That has been defined in section 3.1 of the amendment as a person registered under the Private Vocational Schools Act or "a member of a prescribed class who provides vocational or other training." I can't answer for you today whether the voc rehab subsidiaries

or divisions of insurance companies are a prescribed class under the Private Vocational Schools Act. We could find that out.

Ms Murdock: And get back to you with that.

Mr Mahoney: I suspect they don't want to be. Thanks for your indulgence on that.

The Chair: We next have a Liberal motion, alternate 1.

Mr Mahoney: I move that subsection 53(2.1) of the Workers' Compensation Act, as set out in subsection 9(2) of the bill, be struck out and the following substituted:

"Same

"(2.1) Promptly after contacting the worker, the board shall contact the employer,

"(a) to provide assistance to the employer in developing return-to-work programs, accommodating programs or rehabilitation programs; and

"(b) to offer the employer assistance and services in returning the worker to employment."

1650

I think the real issue here is almost the reason that they're contacting the employer. If you read it in the act, it's for the purpose of identifying the employer's need for voc rehab services. What we're suggesting is that it should be to develop return-to-work programs, accommodation programs or rehab programs and to offer that employer assistance and services in returning the worker to employment. So we just sort of cut through it and get right down to what is the real reason for the contact to be occurring. It's to get the worker back to work; it's not to go in on some sort of a mission to identify the employer's need.

We would recognize that all the employers could use the assistance and it would establish a more cooperative relationship between the Workers' Compensation Board and the employer in trying to identify return-to-work programs. Whether it's modified work or rehabing the injured worker or whatever it is, it just sends out a message that I think many employers have been saying to us, and we've heard them here coming before the committee, that it's almost a confrontational attitude. They're not happy with the bill, but they would just like to see the attitude, I guess, be such that they can work together with the board to find ways to develop these programs. I would just ask for support of that amendment.

Mr Arnott: I'll indicate that I'd like to support this amendment as well. In fact, our caucus had planned to put forward a very similar amendment which would be read right after this one should it not be accepted by the government. It would appear to me to be simply good management practice for this requirement to be placed upon the board, and certainly, as Mr Mahoney's indicated, it would be helpful in terms of bringing parties together in a cooperative way.

Mr Carr: Also, a number of the presenters expressed concern that there was no provision to ensure that programs offered by the WCB are effective in meeting the objective of returning individuals to the point of employability. I think over the course of the hearings the

general consensus was that this was the key question that all three parties put forward: How do we do that? This would seem to meet that objective.

As Mr Arnott has said very clearly, that's similar to the motion that we will be presenting next should this one fail. We're looking for some guidance from the parliamentary assistant on whether this one will pass. We will be supporting this motion put forth by the Liberals. Failing that, I would ask for the support of our motion following that.

Ms Murdock: I'll indicate that we won't be supporting it and I'll explain why. If you look at the provisions under the current act, under section 52, it's very broad in terms of what vocational rehab services are available. In fact, it's so broad that it can be very unique to the injured worker or to the particular employer in terms of their premises and so on. If you go further into subsection 53(4), I think it's worth noting that voc rehab services provided under the previous sections "may include consultation, provision of information and the planning and design of a vocational rehabilitation program."

I find that the Liberal motion here is very limiting in terms of the return-to-work programs, the accommodation programs or the rehabilitation programs. It shouldn't be just those three things; it could possibly be a whole range of other things. So we're not supporting it.

Mr Steven Offer (Mississauga North): Based on what the parliamentary assistant has just said, it appears that she agrees in principle with the section; her only concern is that the wording is somewhat limiting. So I would expect that the government would be supportive of an amendment such as this which adds to some of the criteria. I was wondering if the parliamentary assistant would share with me whether that happens to be her position.

Ms Murdock: I don't think there is a person in the world who would not—well, no, I better not say that, because there are obviously some, but there's certainly no one in this room who disagrees with the concept of getting an injured worker back to work early.

Mr Offer: We're not talking about that.

Ms Murdock: We all agree with that and we all think that vocational rehabilitation programs are the way to go. But you know yourself, Mr Offer, as a person with a legal background—

Mr Offer: Don't criticize me. That's a low ball.

Ms Murdock: You know yourself that when you put into legislation language that is limiting or specific, the interpretation of that then is not inclusive. You know that. They'll end up being very specific into those particular kinds of programs and will not look at the whole range that could possibly be available.

The other thing is that there could be something a year from now, two years from now. There could be brand-new methodology. We don't know what it is. By being limiting in the legislation, then we cannot use something that is going to be developed in the future. That's one of the reasons why the broader provisions under the existing legislation are more acceptable for discretionary purposes later.

Mr Offer: Just as a supplementary to this, if I might continue on with the reasoning of the parliamentary assistant, and I think I understand what you were saying, would that mean then that the criteria which you are imposing on the employers as an amendment to section 103.1 of the act, as found in section 28, would fall to the criticism which you've just levelled as being too specific? When you talk about the determining of a refund or a surcharge being based on health and safety practices and other programs of an employer to reduce injuries and occupational diseases and on vocational rehab practices and programs of the employer, do you think that too falls within your criticism?

Ms Murdock: Well, I think clause (d) covers my comments, which is, "such other matters as the board considers appropriate."

Mr Offer: So then if we inserted in the amendment, in the Liberal motion by Mr Mahoney, the words that follow (a), (b), (c) and (d) of your motion, you would find that acceptable?

Ms Murdock: No. I still wouldn't.

Mr Offer: How come? How come the government, through this act, can say to employers, "Your surcharge or your refund is going to be determined on (a), (b), (c) and (d) of section 103.1," and you won't accept an amendment by the Liberal Party, by Mr Mahoney, that says why doesn't the board, under an amendment to subsection 9(2), give to those same employers assistance in being able to meet the very criteria that you set out 19 sections later?

Why is it that you only have a piece of legislation which dictates and provides no assistance? Why can't you have one that at the very least not only dictates but also provides assistance to employers so that they can provide the type of vocational rehab service, the health and safety practices, that not only will help them but will help the workers of this province, not only in getting back to work but hopefully preventing accidents in the first place? Why is it that the government continues to dictate to employers without providing assistance to those same employers, hopefully to meet the principle that we don't want workers injured in the first place?

Ms Murdock: First of all, I would disagree with you in terms of subsection (3) of your section 28 that you mentioned. I think that it is general enough, that it doesn't get into specific kind of language.

Secondly, I would say that we have operated in the current act on a voluntary basis in terms of those programs, in terms of getting them implemented in the workplace in this province. I think it is unfortunately sad but true that they are not evident in all workplaces, and they have to be if we are going to reduce accidents in this province. So yes, the government does become patriarchal in that section; I'm not disputing that, but I think we have to, for those businesses that don't see fit to put good health and safety practices and good vocational rehab practices in their own workplaces.

1700

Mr Carr: Maybe the parliamentary assistant could be a little more specific in terms of giving us specific

examples of what's missing. You say "all-inclusive." If you could be specific, what wouldn't be included with this amendment, then, examplewise?

Ms Murdock: Well, okay. I don't know all of the vocational rehab and return-to-work programs, accommodation programs and everything that is available, nor do I know the new areas that are coming up that human resource specialists would be developing in the future.

I don't see any need to make that kind of change when we've already got subsection 53(4) that says, "Vocational rehabilitation services provided under subsection (3) may include consultation, the provision of information and the planning and design of a vocational rehabilitation program," and in the generic one under rehabilitation generally under section 52 of the actual act, not the bill, you have, "To aid in getting injured workers back to work and to assist in lessening or removing any handicap resulting from their injuries, the board may take such measures and make such expenditures as it may deem necessary or expedient, and the expense thereof shall be borne, in schedule 1 cases, out of the accident fund and, in schedule 2 cases, by the employer individually, and may be collected in the same manner as compensation or expenses of administration."

It covers anything that may be developed. It's unfortunate but it's true that when you put into legislation specific areas, then you're confined to those areas. That's why I think it should be more general so that you can apply these kinds of programs. You don't know that individual workers may require a very different program. It's not like a surcharge either.

Mr Carr: You said you didn't know of all the programs, so you don't know specifically what could be excluded.

Ms Murdock: Well, I don't know what they are. I don't know—

Mr Carr: So you can't give us any examples of what would be excluded, then, with this.

Ms Murdock: Excluded?

Mr Carr: Yes. Like, specifically, why the concern with this?

Ms Murdock: I guess it's the Interpretation Act that I'm thinking of, and law school training, that you sit there and look at, whenever you have legislation—your legislation is your bones, and your regs and policy are your flesh. So you don't want to limit yourself within the legislation, so that you can develop or expand or be more specific within your regulations or policies. So I'm looking at it from a legal perspective, I recognize that, but I think it's very true that we don't know what cases are going to come up that may require something very different, that may not even be within the scope of a return-to-work program, an accommodation program or a rehab program.

Mr Carr: So you will discuss this with the legal people in the ministry, then, if that's the concern?

Ms Murdock: Yes.

Mr Mahoney: I just had a little twinge there with that last comment. I think you said "that may not be within the scope of a return-to-work program or a rehab pro-

gram." Are you suggesting that we're heading towards some kind of a compensation system that eventually will ignore returning to work?

Ms Murdock: No.

Mr Mahoney: Isn't that the principle?

Mr Klopp: It's lawyer talk.

Ms Murdock: No. Emphatically not. I'm saying that getting a worker back to work may require something that's not within something we know of today. It could be something entirely different. But I would ask you, since this is a Liberal motion, whether or not you would not think that your motion is redundant, considering subsection 53(11) of the act?

Mr Mahoney: Which says? Where is that?

Ms Murdock: Which says, "A vocational rehabilitation program may include vocational training, language training, general skills upgrading, refresher courses, employment counselling (including training in job search skills and in the identification of employment opportunities), and assistance in adapting the workplace of an employer to accommodate the worker."

Interjections.

Ms Murdock: Which one? No, it's 42 of the act, but we're pulling out one line.

Mr Mahoney: I don't know. Isn't that defining specifically the areas that you're referring to? We're reading this as we talk, but you're suggesting that the specific areas around vocational rehab are identified in subsection 53(11), that vocational rehab may include vocational training, language etc.

Ms Murdock: "May include."

Mr Mahoney: So they're being quite specific in there.

Ms Murdock: Yes, they are.

Mr Mahoney: I took your criticism of my motion to be that I was being too specific, or limiting.

Ms Murdock: Limiting.

Mr Mahoney: I have some difficulty in understanding how you can throw a clause specific back at me to counter the argument that I'm being too specific in my clause.

Ms Murdock: No, because—

Mr Klopp: It's lawyer talk.

Mr Mahoney: I guess it is lawyer talk.

Ms Murdock: Yes, it is lawyer talk, and he's not a lawyer, so that's what he keeps telling me.

Mr Mahoney: Since I'm not one, you know.

Ms Murdock: I think it's covered by the words "may include."

Mr Mahoney: You see, I'm trying to do something that real people will understand, with all due respect.

Ms Murdock: Well, excuse me, but I don't think anyone, including lawyers, understands all of the Workers' Compensation Act—

Mr Mahoney: Normal. Ordinary, maybe; that's the word I want.

Ms Murdock: —because it is very complex. There's

no doubt about it. But the words "may include," or the word "may," is expansive and you can put anything in there. Yours does not do that.

Mr Mahoney: The issue here, you see, is not about defining what will be in a voc rehab program.

Ms Murdock: No. I know.

Mr Mahoney: That may well indeed be important to do in another section of the act, and you're pointing out that it is done in that section, and perhaps in other areas of this act, which, unlike you, I've not consumed yet, nor do I want to.

Ms Murdock: Well, I haven't consumed it either.

Mr Mahoney: But the issue we're raising in our amendment, I think you've totally missed the point. What we're talking about is offering assistance to the employers in getting the worker to return to work. Clause (b) could not be more unlimiting in the wording of it where it simply says that the board should contact the employer, after having contacted the worker, "to offer the employer assistance and services in returning the worker to employment."

What this really says is, "Mr Employer or Ms Employer, you are our customer, and as a result of your being our customer, and we submit a bill to you every month and you pay that bill to keep us in business"—this is the Workers' Compensation Board talking—"we're going to offer you a service, and that service will be in such a way to help you get your injured worker back to work."

It is as broad and as wide open as you could possibly want it. It does not define or even deal with definitions of voc rehab programs or return-to-work. It simply says: "We're going to help you. You're our customer, and we're going to help you. We're going to help you in developing return-to-work programs, accommodating programs, rehab programs, or we're going to offer you assistance and services to help you get the worker back to work."

How in the world is that specific? That's about as wide open as you could want it, and the point of it is that it changes the tone of the legislation, as Mr Offer pointed out, from being one of being a dictum to the employers to saying, "You're our customer and we're here to help you," and in the end, by helping the employer, if the goal is to return the worker to work, you help the injured worker, which is supposed to be the purpose of the Workers' Compensation Act.

I understand the fact, with due respect, that you may have been given some direction not to accept certain amendments, but don't make an argument that is based on, really, false information that this amendment is too specific. Tell me you won't support the amendment because the minister told you not to. That I understand. But I don't understand an argument that says I'm being too specific when it's absolutely contrary to that statement.

Ms Murdock: I don't agree with you at all, but I think we could go on forever agreeing to disagree. I've made my statement as to why I'm not supporting it, and I stand by that.

The Chair: Further discussion on the Liberal motion by Mr Mahoney? Seeing no further discussion, all those in favour? Opposed? Defeated.

1710

Mr Mahoney: It's a waste of time. Did you do a count there?

The Chair: Did I do a count?

Mr Mahoney: I asked you first.

The Chair: Yes, I did.

Mr Mahoney: Would you do it again?

The Chair: It was six to five, opposed.

Mr Mahoney: Who's voting? Did the parliamentary assistant vote?

The Chair: Yes, she did.

Next, a PC motion.

Mr Arnott: I move that subsection 53(2.1) of the Workers' Compensation Act, as set out in subsection 9(2) of the bill, be struck out and the following substituted:

"Same

"(2.1) Promptly after contacting the worker, the board shall contact the employer for the purpose of offering the employer the assistance and services of the board to help to return the worker to employment."

As we indicated earlier, this is similar in intent to what Mr Mahoney put forward in the previous amendment. I'm not sure what I can say to add to the discussion that was already put forward except to say that I hope the parliamentary assistant will look at it favourably and give consideration to it.

In my opinion, it's a fairly straightforward matter. I'm not a lawyer so I may perhaps be missing some of the legalistic aspects that the parliamentary assistant indicated, but to me it's just simple good management practice: the board offering its voc rehab services to employers in a reasonable period of time. I would hope that if the parliamentary assistant and the government members stand in the way of this amendment being passed, at least we'll get some commitment from her that this will be adopted as policy by the board.

We talked about regulations being again more nuts and bolts as opposed to the broad outline of the legislation. I just think it's a sensible idea and I hope you would give consideration to it.

Ms Murdock: I'm thinking ahead to the government amendment that's coming up. Through the consultation and when the public hearings were on, the whole idea of that was, number one, after discussing with the worker and getting the medical report back as to limitations and so on, then the employer would be contacted following that to make a determination as to what kinds of things might be needed, whether or not the employer even has that in place or whether some assistance would have to be provided.

I would say to you that I believe our amendment—and I realize that we do opposition amendments before we do ours—addresses that concern and so the government members will be supporting the government amendment, and I believe we do—

The Chair: The government?

Interjection: The bill itself.

Ms Murdock: I mean—sorry, in the bill.

Mr Mahoney: You have an amendment.

The Chair: No, not to this section.

Ms Murdock: I think we already do that under subsection 9(3) in the bill.

Mr Mahoney: Which number is that?

The Chair: She's talking about in the bill.

Ms Murdock: Subsection 9(3) in the bill. Where it says, "Subsection 53(3) of the act is repealed and the following substituted." We're not amending that section. "The board shall provide the worker and the employer with vocational rehabilitation services if the board considers it appropriate to do so."

Ours is coming up. Where is it now? Just a second. Here we go.

Interjections.

Ms Murdock: It's never been done before with "and the employer" in that section.

Mr Arnott: You understand our intent.

Ms Murdock: Yes, I understand.

Mr Arnott: And you're saying that our intent is valid and that your amendment covers off what we're trying to do.

Ms Murdock: I think the section does. Our amendment—we don't have one on your section. I don't see one, anyway. Just a minute.

Mr Carr: While they're looking, basically, if I followed you there—and again I don't need to rehash the reasoning behind it; quite a few of the groups came forward and expressed a desire to have an amendment like this during the public hearings. If I understood the parliamentary assistant, what she just read and said—did you have a revelation just come to you?

Ms Murdock: No.

Mr Carr: Go ahead and I'll save my question.

Ms Murdock: In the act it says, "The board shall provide a worker contacted under..." and that's the way the current legislation reads. The board has never done it where they would work on voc rehab services with an employer. They never had to under the existing legislation. I and the ministry believe that "The board shall provide the worker and the employer with vocational rehabilitation services..." covers what you're suggesting.

Mr Carr: What you said a few minutes ago was "if the board considers it appropriate to do so." You're talking about being specific. That is the most vague language possible: "if the board considers it appropriate..." How are we supposed to take that? What is appropriate in the board's mind? If you leave it vague like that, to me, legally that is worse than trying to define it. You say it's not defined. Define it and add what you'd like rather than saying "if it's appropriate to do so." That leaves it fully up to the discretion of the board. What we're saying as legislators is that we need to be more specific; it's our job to tie this up. If the board is going to do it through the regulations or whatever, then let's be

clear about what they mean. So what do they mean by "it's appropriate to do so"?

Ms Murdock: I think it needs to be broader so that the individual circumstances of the individual workplaces will be considered on their own needs and their own requirements or the injured worker's requirements. So that the board, on the basis of reports that it gets in, medical reports and so on—it may only be a handle or a knob that needs to be changed. If the board determines that this is all that needs to be changed or that flextime, whatever—I don't know. But whatever it is, it's broad enough that the board can make that determination.

Mr Carr: I know your background, that you've worked many years in this, and you see it as being the board would never do anything that wouldn't be considered to do that, but the way you read subsection 53(3), basically it leaves it to "if the board considers it appropriate to do so," which you just read. If, let's say, another particular group is in there at the WCB, it leaves it up to those individuals and they may decide that there isn't anything that's appropriate.

Ms Murdock: I don't know what you mean. What do you mean if another group is at the board?

Mr Carr: The way you're explaining it, you're saying, "Of course the board is going to do everything it can to consider it appropriate to do so." But when they leave it that open, the board may decide it isn't appropriate, and that's why we're saying we need to have it defined. You're just automatically assuming, because of your background, which is commendable—but when you leave it open that the interpretation is left to the board, and let's say a big, bad government comes in—I know you think you're going to get elected again, but let's assume you don't and there's another government. You're leaving that wide open. Why don't you want to tighten it up, particularly as you head out, so that "appropriate to do so" isn't left to the board? That's what I can't see.

Ms Murdock: First of all, I believe I have explained that individual circumstances alter individual cases, so by leaving it broad enough the board has the discretion to make that determination as to what may or may not be needed. But if you look at this in isolation—you have to look at the whole thing. The whole bill is geared to getting people back to work, getting the company to have fewer lost-time accidents and to improve health and safety in the workplace and all those kinds of things. What may be appropriate in one workplace will not be in another.

1720

Mr Carr: But do you see what I'm getting at? You're assuming "appropriate" means expanding it.

Ms Murdock: Not necessarily.

Mr Carr: I'm saying that "appropriate" could be condensing it significantly. That's why legislation needs to be, I think, a lot clearer.

Ms Murdock: I'm going to have Mr Toker explain a situation where the board considers it inappropriate to provide rehab services.

Mr Toker: This is just adding to what Ms Murdock said a moment ago. There may be circumstances when

the board may consider it inappropriate to provide voc rehab services either to the employer or to the worker. The situation that comes to mind is the situation where the worker has returned to work within a relatively short period of time and for all intents and purposes their claim has been resolved. In those instances, arguably it would be quite inappropriate for the board to be required to offer or provide vocational rehabilitation services either to the worker or to the employer. I think from a policy perspective those instances were kept in mind when retaining that discretion for the board in the language.

Mr Carr: I'm not a lawyer, but wouldn't the way it's written there, saying provide "services of the board to help to return the worker to employment," mean that legally if the person is already returned to employment this particular section wouldn't apply, or am I wrong? Legally, that just seems so commonsense to me. I'm not a lawyer, but maybe that's why I have a little common sense.

Ms Murdock: I would say no.

Mr Carr: The only guy who didn't was the guy from Markham. What was his name? Jag Bhaduria. He wanted to be a lawyer.

Interjection.

Mr Carr: No, I'm not a lawyer. I wanted to be, though.

Mr Mahoney: I saw you in court once. Were you not there in court?

Mr Carr: No, I was impersonating a goal-tender.

The Chair: Order, please.

Mr Carr: I thought there was further explanation. No?

Ms Murdock: I apologize.

Mr Carr: It's okay. We were having a little fun at this late hour.

The last line says "to help to return the worker to employment." I would assume, with the argument the gentleman was making, if they're already back to work, this wouldn't apply and there would be no need to contact, based on that last line.

Ms Murdock: I'm trying to think. The whole bill's intent, as stated in the purpose clause and also in almost all sections of the whole bill, is saying that very thing, to help to return the worker back to work. If you're looking at this grammatically, you're probably right that it's to call the employer: "the purpose of offering the employer the assistance and services." The focus isn't on the other, but the whole bill is on returning the worker to work.

Mr Carr: But I'm looking at it from the standpoint that the purpose may be great, whatever the purpose is in theory—we all know purpose clauses are great, but when we get down to the actual specifics, what are we going to do? Everybody can agree on the purpose clause. It can say the sky is going to be bluer than blue and we're all going to brake for cats and everything else in the world. But when you get into the specifics of it and actually doing it, which is what we're talking about—everybody can agree on the purpose clause, but if you want it to actually work, we need to be a little more specific.

All we're saying is that they will contact the employers to offer those services. You're assuming it's going to be done and that all measures are going to be taken to get that person back to work. I'm saying this might not necessarily be the case. If you leave it "appropriate to do so," then for whatever reason, whether it's a staff shortage at the WCB because of costs or whatever, we all of a sudden don't do things. If it is put in the act and laid out specifically, then as we go away as legislators we're going to know it's going to be done. The principle seems fairly simple to me.

One suggestion I might make, if I'm making a bit of an impact on the members is, would it be possible to stand this down to some other point, while they think about it, and go on to the next one?

Ms Murdock: I'm not disagreeing with Mr Carr's concept; I just think our language covers it. We're not going to agree on language is what I'm saying, really.

Mr Carr: Okay. I don't want to go on. I just wanted to be helpful.

Ms Murdock: And you have been.

Mr Mahoney: I want to speak in support of this amendment, but I want to ask the parliamentary assistant if she can tell me in non-legalistic terms, because I don't care about the wording as much as how it actually works. Your section says there's agreement, right up to the word "of": "Promptly after contacting the worker, the board shall contact the employer for the purpose of..." The question here is, what is the purpose in the board contacting the employer?

When you go back to the purpose clause—and whenever you use the word "purpose" in this bill, you should be referring to the purpose clause, I presume—it says in (c) that the purpose of this act is "to provide rehabilitation services and programs to facilitate the workers' return to work."

What the Conservative amendment is saying and what our amendment basically said—but I think the Conservative amendment is actually simpler and leaves it more wide-open without nailing it down to the kind of specifics you were worried about and so in some ways should be easier for you to support; based on your argument against our amendment, it should be easier for you to support this.

When the board contacts the employer "for the purpose of," in this clause identifying the employer's need, is the board going in to do some kind of audit of the employer's requirements, or systems in place or lack of systems in place, or ability to deal with the services of vocational rehab? Are they going in to say: "All right. You've got an injured worker. Are you guys capable of providing voc rehab services?" Or are they going in to say, "How can we help you?"

Ms Murdock: Yes.

Mr Mahoney: What do you mean "yes"?

Ms Murdock: The latter.

Mr Mahoney: They're doing the latter?

Ms Murdock: I would say so. If they've contacted the worker and the worker's health care provider has

stated they can't lift 10 kilograms and can't lift their arm above their shoulder or whatever, they call the employer and say: "These are the restrictions on the worker. The worker can go back to work but only if they can't lift 10 kilograms and they can't lift their arm above their shoulder. Do you have anything there within your workplace that would be able to accommodate that? If you don't, what kinds of things can we do to get the worker back to work?"

Mr Mahoney: But to take the words you just used, to try to be as close as I can, the board goes in and says: "Do you have the facilities there to deal with this? If you don't, how can we help?" But, "If you don't, how can we help?" isn't said there. It simply says to go in and identify it. Then they have this almost trapdoor phrase in subsection (3): "If the board considers it appropriate to do so."

All throughout this bill there is that concern. There's the ability you referred to earlier where—you didn't refer to this one, but as an example, paragraph 65.2(2)5: "Any other matter agreed to by the board and the minister." Go on into other sections and there's "such other matters as the board considers appropriate."

What frightens the employers here is that they want to look at the board as being an agency that's there to help them return the worker to work. They've got all this power throughout this bill to do whatever the hell they want based on whether or not they—and you never know who "they" is. Did you ever try to figure out in this world who "they" is? You can never figure it out. If you hire a consultant or someone to go and help you out with this, the consultant will come back and say, "They don't consider it appropriate." "Could I have a name? Is there a first name to this 'they,' or a last name?" You never know. You deal with some invisible bureaucrat somewhere who has decided it's not appropriate to offer voc rehab services to the employer.

1730

Why is it not appropriate? The employer needs help. The employer is paying the cost of the premiums. The employer is the customer. Why won't you simply say, somewhere in here, without the caveat that allows the board to go and hide in a back room somewhere, that it's the board's responsibility to provide voc rehab services to the employers for the purposes of getting the injured worker back to work? That's what the amendment by the Conservative Party says and I believe that's what mine says. I'm happy to accept this one if you'll accept it. If that's what you really mean and you're telling us you mean it, why won't you say it?

Ms Murdock: The board has to have some discretion. I realize there is concern around that area, but it has to have some discretion in the instances that have already been mentioned by Mr Tokar and in instances where the company no longer exists.

Mr Mahoney: You can cover that one, you can put that in there. If a company doesn't exist, you don't have to offer it any help. I'd live with that.

Ms Murdock: Where it is "appropriate to do so" I think it covers it all. I think our language covers the

gamut of possibilities.

Mr Mahoney: No, you don't. You can't say that when you admit that the object here is to get the worker back to work. You admit that in practice—

Ms Murdock: But you're looking at that section all alone, by itself.

Mr Mahoney: No, I'm looking at the whole bill.

Ms Murdock: I'm saying that the whole bill, if you look at the whole bill, does do that. That is the intent. I think it's pretty evident.

Mr Mahoney: That's the point: it doesn't. If you go to the purpose clause, it tells you what the purpose is. If you go to this clause, what it really says—and I don't believe this wording is there by accident; somebody is driving this agenda—is that the Workers' Compensation Board "shall contact the employer for the purpose of identifying the employer's need for vocational rehabilitation services," not for helping the employer, not for helping them provide voc rehab services. When you extrapolate that into all the other bills, what could be the impact on the NEER program? What could be the impact when you read through here of the board's almost police-like powers to make decisions without any accountability? This type of legislation is all about wording.

Whether we are or aren't lawyers, the fact of the matter is that it's the legal interpretation that is used somewhere down the road by a consultant on behalf of a worker or an employer, that they will hang their hat on two or three words or one word in these documents. That's why it's so important that they be clear and simple.

I understand the requirement for legal counsel to draft bills, and sometimes you read them and you go, "Boy, what does that say?" But when you sit down and look through it, I understand that requirement because it's going to have to be interpreted within the judiciary or something of that nature down the road or the Legislature. That's fine, I can live with that.

But you've told us what the intent is, and the intent is to help the employer get that worker back to work. You agree with that. So you can't tell me that turning these down, which say exactly that, in everyday English language that's been drafted properly by legal counsel—it's not something the Conservative critic or I drafted out of the air. Just like you in government, we go to the legal counsel people and say, "Here's the amendment we want to do; tell us how to do it," and they draft it up. So it is in legalese, it is in terminology that should be acceptable to put in a bill and it says what you say you want to say, and you won't say it. It's frustrating. We're sitting here going: "Just give us a little crumb. Just throw a little tidbit into the ring so we don't feel like we're totally wasting our time here."

Ms Murdock: You're asking me for a response? I thought it was all rhetorical.

Mr Mahoney: Do what you want.

Mr Offer: I'm supportive of the amendment for all that has been said by both opposition parties and indeed also by the parliamentary assistant, because I think in a

strange way she has spoken eloquently about the need for the amendment.

I guess the problem I have with 9(3) is not any of the wording, except that it is going to be complaint-based: For the board considering something to be appropriate, something is going to trigger the intervention of the board to determine appropriateness, and the thing that will trigger the intervention of the board will be a complaint.

That might be necessary, but I think there is an opportunity in these amendments to take it one step earlier and give to the employers the opportunity of asking the board for assistance in devising back-to-work, vocational rehab service, give to the employers of the province the opportunity not when the board determines it to be appropriate but when they also would like that type of opportunity, to say to the board: "We've got this. We want you to provide to us some assistance in an effective vocational rehab service."

I just have difficulty understanding why a piece of legislation and amendments to an act would not give that opportunity to employers to get out of this complaint-based, adversarial, good guy-bad guy type of scenario. The amendment before the committee and the previous amendment in themselves are not long-winded amendments—

Mr Mahoney: The amenders are.

Ms Murdock: The amendments aren't long-winded.

Mr Offer: There is a time when a word comes out of my mouth which I wish I could just grab back. However, that being said, I'll rely on Hansard to give the proper interpretation of what "long-winded" means. It means precise and right to the point.

It gives us a wonderful opportunity to cast a new atmosphere around vocational rehab service, where it becomes more of the nature of assistive, less confrontational, more cooperative, less adversarial. I believe very much that this is more in the best interests of the worker than of anyone else, so I would like to ask the parliamentary assistant if she would—let me just say this. If I don't hear anything from the parliamentary assistant, I'm going to assume she says yes.

The Chair: We'll stand recessed for five minutes till we get a response from the parliamentary assistant.

The committee recessed from 1740 to 1747.

The Chair: Do we have our response from the parliamentary assistant to Mr Offer's inquiries?

Ms Murdock: May I just have a brief summary of the point he was making?

The Chair: Mr Offer, in 30 seconds, a summary of your question.

Mr Carr: It's impossible. I'd like to hear that.

The Chair: Yes, he can do it. I've seen him do it in the past.

Mr Offer: Why can't we accept an amendment which moves us away from a complaint-based, adversarial approach to one that is cooperative and will be in the best interests of the injured workers today and for all time?

Ms Murdock: Very succinctly put. You are to be commended. I'm just so surprised.

It's interesting that you would think this is complaint-based, because what happens in this section, in both (2.1) and in (3), is that the injury occurs, the injured worker's off, it's determined what kind of restrictions they have and what kind of voc rehab or accommodation would be required, and then the board would call the employer on the basis of, first of all, under (2.1), identifying what needs there would be, and then under (3) determining how that could be best decided.

I don't know whether I'd agree with you that it's complaint-driven; that would be my first point. I agree with you that the whole system is set up on an adversarial basis, but I don't think that section is truly complaint-driven.

The Chair: Further discussion on Mr Arnott's motion? Seeing none, all those in favour? Opposed? Defeated.

A Liberal motion next.

Mr Mahoney: Why don't we adjourn? We've got a vote in five minutes. Rather than begin, why don't we—

The Chair: We do have a vote coming up in the House—

Mr Carr: Plus everyone might want to hear Bill Murdoch speak.

Mr Mahoney: Unless the parliamentary assistant can make my day and tell me she'd be prepared to endorse this one, because it deals with the other health care professionals.

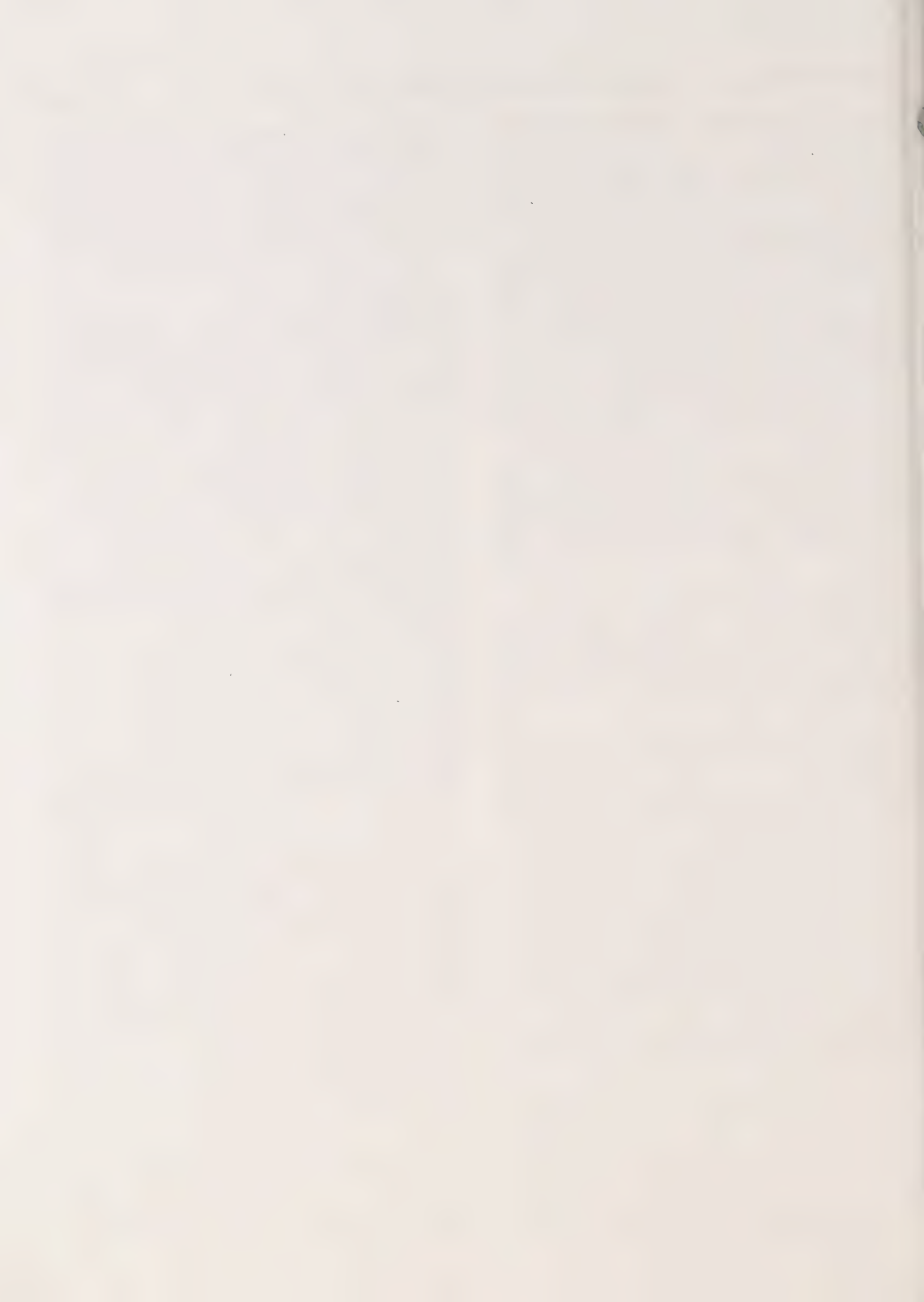
Ms Murdock: Sorry. In anticipation of going upstairs for the vote, I had closed my book.

Mr Mahoney: If we need to debate this at length I would say let's adjourn, but if you can support it, I won't debate it, we'll just do it.

Ms Murdock: What did we do that was different? I was just wondering how ours is different.

The Chair: I would suspect, from the public hearings we conducted, that this may turn into more than a five-minute discussion, so this committee will stand adjourned until Monday, November 14.

The committee adjourned at 1751.



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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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- *Offer, Steven (Mississauga North/-Nord L)
Turnbull, David (York Mills PC)
- *Waters, Daniel (Muskoka-Georgian Bay ND)
- *In attendance / présents*

Substitutions present / Membres remplaçants présents:

Arnott, Ted (Wellington PC) for Mr Turnbull
Carr, Gary (Oakville South/-Sud PC) for Mr Jordan
Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND) for Mr Mills
Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Conway

Also taking part / Autres participants et participantes:

Ministry of Labour:
Murdock, Sharon, parliamentary assistant to the minister
Toker, Mitchell, manager, workers' compensation board

Clerk / Greffière: Manikel, Tannis

Staff / Personnel: Hopkins, Laura, legislative counsel

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Third Session, 35th Parliament

**Assemblée législative
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Troisième session, 35^e législature

**Official Report
of Debates
(Hansard)**

Monday 14 November 1994

**Journal
des débats
(Hansard)**

Lundi 14 novembre 1994



**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Workers' Compensation and
Occupational Health and Safety
Amendment Act, 1994**

**Loi de 1994 modifiant la Loi
sur les accidents du travail et la Loi
sur la santé et la sécurité au travail**

Chair: Mike Cooper
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
RESOURCES DEVELOPMENT**

**COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES**

Monday 14 November 1994

Lundi 14 novembre 1994

The committee met at 1602 in committee room 1.

WORKERS' COMPENSATION AND
OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994

LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL
ET LA LOI SUR LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the
Workers' Compensation Act and the Occupational Health
and Safety Act / Projet de loi 165, Loi modifiant la Loi
sur les accidents du travail et la Loi sur la santé et la
sécurité au travail.

The Chair (Mr Mike Cooper): I call the standing
committee on resources development to order.

Mr David Turnbull (York Mills): I propose a
motion that, in view of the municipal elections, we rise
so that members who live some distance from Toronto
can go to their home constituencies.

The Chair: Is there any discussion on the motion by
Mr Turnbull? Seeing no discussion, all those in favour?
Opposed? Carried unanimously.

This committee stands adjourned until Wednesday
afternoon.

The committee adjourned at 1603.

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Monday 14 November 1994

Workers' Compensation and Occupational Health and Safety Amendment Act, 1994, Bill 165,
Mr Mackenzie / Loi de 1994 modifiant la Loi sur les accidents du travail et la Loi sur la santé
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Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Conway

Clerk / Greffière: Manikel, Tannis

Staff / Personnel: Spakowski, Mark, legislative counsel

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DÉVELOPPEMENT DES RESSOURCES

Wednesday 16 November 1994

Mercredi 16 novembre 1994

*The committee met at 1605 in committee room 1.*WORKERS' COMPENSATION AND
OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL ET LA LOI
SUR LA SANTÉ ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

The Chair (Mr Mike Cooper): We'll be continuing with our clause-by-clause analysis of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act. We now have a Liberal motion.

Mr Steven W. Mahoney (Mississauga West): I move that subsection 53(10) of the Workers' Compensation Act, as set out in subsection 9(5) of the bill, be amended by adding after "physician" in the last line "or other health care professionals."

I hope this motion might be one that survives. I sort of recall from the hearings that there seemed to be a fairly broad consensus on the fact that there are a lot of people involved in the workers' compensation system who can be part of the solution and part of too many of the problems that occur. I would give you an example of occupational health and safety nurses.

I spoke at the Ontario Hospital Association convention to a group, in a morning session last week, of health and safety nurses, and they have a lot of very, very good ideas, good input that I think they can bring to this. We should take this out of the realm of being strictly the purview of doctors or physicians and allow for other health care professionals to have input and be involved in the system.

I could go on and name others, such as the chiropractors and podiatrists. There is any number of them, and for fear of excluding some I'll try not to be too detailed in that area, but I have been contacted as a result of the paper that we put together in the Liberal caucus. We were approached by numerous members of the health care professions, both during the outreach that we did and afterwards, suggesting that they had many good things to bring to the table.

I think they do. We heard that at the committee and I would hope that the committee would support this amendment.

The Chair: Further discussion? Seeing no further

discussion, all those in favour? Opposed? Defeated.

Mr Mahoney: Not even a reason why?

Ms Sharon Murdock (Sudbury): We've got a government motion coming up that's the same, basically.

Mr Mahoney: So why didn't you support this one?

Ms Murdock: The effect is the same, but the government motion ties it in with the Regulated Health Professions Act.

Mr Mahoney: If they're going to be defeated that easily, I'm going to have to speak about them longer.

The Chair: We now have a PC motion. Mr Carr.

Mr Gary Carr (Oakville South): I move that subsection 53(10) of the Workers' Compensation Act, as set out in subsection 9(5) of the bill, be struck out and the following substituted:

"Vocational rehabilitation

"(10) If the board determines, as a result of an assessment or otherwise, that a worker requires a vocational rehabilitation program, the board in consultation with the worker, the employer and, if possible, any appropriate health care practitioner of the worker, shall design and provide one.

"Health care practitioner

"(10.1) In this section, 'health care practitioner' means a member of the college of a health profession as defined in the Regulated Health Professions Act, 1991."

As this is similar to the government's motion with the exception of a few minor changes, I suspect it will be supported by the government, if nothing else than to let us win one vote, because it is very, very similar and I would like to participate and offer something that is constructive.

This amendment is in keeping with a recent proclamation of the Regulated Health Professions Act, which as we all know, having been involved in that, introduced fundamental changes in the way health care services are delivered in Ontario, dealing with increased public accountability by health care providers, recognition of the expertise of a greater range of health care professionals, increased freedom for consumers to choose from among regulated professions, designing and providing vocational rehabilitation programs.

The wording ignores the fact that many injured workers may have non-physicians participating in their care or as their primary care provider. This section, we believe, fails to recognize the expertise of rehabilitation professionals in designing and providing vocational rehab programs, and I think it would be a shame not to include

them. Psychologists, for example, commonly treat WCB clients for such conditions as stress disorders, chronic pain syndrome, depression and anxiety disorders that have arisen as a result of the workplace injury.

I think this is an amendment that has come forward as a result of some of the discussions during the hearings. The Ontario Psychological Association and the Ontario Chiropractic Association support this amendment as well.

Seeing as it is similar to the government one, I suspect it will support us on this particular amendment, because it has been brought forward in good faith to attempt to make this bill a little bit better. Hopefully, the parliamentary assistant will be able to support it, and if not, explain why as we go along.

Ms Murdock: Actually, everything that you said I agree with and everything Mr Mahoney said, I agree with that too. That's why we're bringing in our motion.

Just two points: In your subsection (10), Mr Carr, when you look at it, there's an additional line we're adding in ours, not only "any appropriate health care practitioner," but also "any health professional treating the worker shall design and provide one." So it extends it a little further.

Also, in subsection (10.1), we're trying to follow the other acts that exist, and the Regulated Health Professions Act refers to "health professional" rather than "health care practitioner." So we're going to try to keep to that language.

That's why we won't support this one. We support it, but it's just that the language is going to be more legally correct in the next one.

Mr Mahoney: Let me ask if we have a list of who is actually identified in the Regulated Health Professions Act, 1991, as a health professional.

Ms Murdock: There are 26 new regulated health professionals who have been recognized. All of the ones you mentioned earlier are included in that.

Mr Mahoney: Could we get a list of that?

Ms Murdock: We can get a list and provide it to you, yes.

Mr Mahoney: How soon can we get a list of that?

Ms Murdock: We just have to get the schedule to the act, so we'll have to call the Ministry of Health and get it.

Mr Mahoney: So some time before the end of the year.

Ms Murdock: Oh, now, not too sarcastic here. Monday for sure at the latest.

Mr Kimble Sutherland (Oxford): If we had a copy of the bill or a copy out of the bill, would the Clerk's office be able to provide that?

Ms Murdock: I don't know.

Mr Sutherland: That would outline what's listed?

Ms Murdock: Yes. It was Bill 43.

Clerk of the Committee (Ms Tannis Manikel): I'll go and look and see if I can find it. If it's in the regulations, it might not—

Ms Murdock: In any case, we can call the ministry

and ask for the 26 listings.

The Chair: Further discussion on Mr Carr's motion?

Mr Carr: Yes, I was just going to say that, as I understand it, you agree with it. It's just that I wanted to keep them with the act.

The Chair: No further discussion? All those in support? Opposed? Defeated.

We have a government motion.

Ms Murdock: I move that subsection 53(10) of the Workers' Compensation Act, as set out in subsection 9(5) of the bill, be struck out and the following substituted:

"Vocational rehabilitation

"(10) If the board determines, as a result of an assessment or otherwise, that a worker requires a vocational rehabilitation program, the board in consultation with the worker, the employer and, if possible, any health professional treating the worker shall design and provide one.

"Definition of health professional

"(10.1) In subsection (10), 'health professional' means a member of the college of a health profession as defined in the Regulated Health Professions Act, 1991."

Basically, I've already stated, and it just concurs with what the Conservative Party has stated.

The Chair: Further discussion? Seeing none, all those in favour? Opposed? Carried.

PC motion.

Mr Carr: Subsection 9(7) of the bill, subsections 53(12) and (13) of the Workers' Compensation Act.

I move that subsection 9(7) of the bill be struck out.

Subsection 9(7) of the bill extends assistance to the worker "in seeking employment for a period of up to six months after the worker is available for employment" and further allows for an additional six months even if not requested by a worker or employer. What this does is it implies that job search assistance can be provided even if the worker did not wish the assistance or was otherwise non-cooperative in the rehabilitation process.

As we all know, having heard some of the public consultation, there was some concern expressed that this provision could be abused and misused as a way of extending benefits to workers who are not cooperating with the WCB, particularly in the absence of guidelines to control the WCB's use of the initiative. That's the thrust of the reason we want that struck out.

Just very quickly too: This was during the public consultation. The Employers' Advocacy Council had talked about this. The legal clinics of eastern Ontario and also the Ontario Hospital Association talked about some of the problems relating to this particular subsection of the bill.

Ms Murdock: It already exists in the act under subsection (11), but it clarifies the time limits and it is not mandatory. I'm not sure if I heard you say that it would be automatic that they would get it even if the worker didn't want it. If the voc rehab counsellor determines that following rehabilitation and ability reskilling, then this would allow them to include assistance in seeking employment. There is really no change already, but it limits it for a period of up to six months, so I would not

agree with your removal of that section.

Mr Carr: So you're saying who right now can make that decision?

Ms Murdock: Right now it's done under the act, under the counsellors they have.

Mr Carr: So this in your mind isn't an extension?

Ms Murdock: Sorry? This in my mind is what?

Mr Carr: Is not an extension?

Ms Murdock: No, no, it isn't at all. You're saying that beyond what they already get in the act this would add another six months to it?

Mr Carr: Yes.

Ms Murdock: No. I'll let Mitch Toker explain.

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Mr Mitchell Toker: In the bill itself in subsection 9(6)—I'll point you to that for a moment—you'll see that "assistance in seeking employment" is struck out of the current subsection 53(11). It's then added as its own subsection in subsection (7). The reason we did this in the bill is that the current structure of that section that establishes in subsection (11) the possible components of a voc rehab program, which includes assistance in seeking employment, has caused some confusion in how the board administers that and how the time limit or the extension of the six months is administered.

Mr Carr: What do you mean, caused confusion?

Mr Toker: I'm sorry that my explanation is so confusing. The six months referred to in subsection 53(12)—

Ms Murdock: Of the act.

Mr Toker: —of the act has been interpreted as a mandatory requirement that the board extend the period by six months. What we've attempted to do in the bill is establish in the new subsection (12) that a voc rehab program may include assistance in seeking employment, and then if you turn over into subsection (13), we said that it may be extended for a further period of up to six months. It's discretionary.

The assistance in seeking employment is not a new element of a voc rehab program. It already exists in subsection 53(11). We've re-established it in 53(12) and we've tried to re-establish more clearly that the additional six months is discretionary.

Mr Carr: Just a quick clarification: You're with legal, then?

Mr Toker: I'm with policy.

Mr Carr: Policy. Okay. But it's for legal reasons that you're essentially saying this has been done.

Ms Sherry Cohen: Doesn't change the substance of the section; it simply clarifies the language and makes it clear that the board has a discretion and not a duty with respect to extending it for six months.

Ms Murdock: In fact, it does what you really want it to do. Your concern, at least from what I heard you say, is that you want it to not be a mandatory thing that it's automatic that you get assistance to seek employment, and ours would do that.

Mr Carr: What I'm wondering is why the confusion with people like the Ontario Hospital Association? I'm

just wondering why we could get so confused over something like this, because you remember during the hearings they were the ones who came forward.

Ms Murdock: Yes. If you look at the act portion, not the bill, of what exists, the language uses the word "shall" and it makes it seem like you have to do it. But by clarifying it, then the board "may" determine that assistance is required and it shall be up to six months, so it isn't an automatic six-month extension, as the Ontario Hospital Association stated when they were here.

Mr Carr: I guess continuing on with it isn't going to do too much good for the people who—and the legal clinics of eastern Ontario as well took a look at it. I know what you're saying, referring back to the act and so on, but it's these very people. It is a legal question. The legal clinics of eastern Ontario were one of the people that suggested that this subsection be struck out.

I'm just wondering why we get so much confusion between legal people on the ministry staff and people who are out in the legal clinics of eastern Ontario who came forward and said, "This is what we'd like to see happen with the bill." I understand what you're saying, but that isn't what the public was saying. I understand how you're trying to explain it, but that is not what we heard in the consultation. That is all I'm saying.

Ms Murdock: There weren't very many groups that came before us that focused on these sections. The mandatory nature is removed and it makes it more discretionary, and I think that is beneficial, actually, for those workers who require it. It'll be evident, and the rehab counsellor will be able to make that determination.

Mr Mahoney: As I recall, a lot of the concern around this entire concept is whether or not workers' compensation is income replacement for an injured worker and rehabilitation and return to work either in a modified way or if it has become an educational system and a total job replacement system.

What we see happen and what I think the management people who pay the premiums are concerned about is that they see probably it's more society's role at large to determine whether or not they're going to teach a heretofore illiterate individual who happened to get injured on the job how to read and write.

Is that the responsibility of a workers' compensation insurance plan or is that the responsibility of the government etc, the taxpayer at large? When you start defining voc rehab as including training, as it does in subsection (11), to include language training, general skills upgrading, refresher courses, employment counselling, including job-search skills etc, it's a little bit of a catch-22 because you want to get them back to work, and if you get them back to work, presumably you get them off compensation, although not always, as we well know. But that is the principle.

On the other hand, I think what we were hearing from the groups when they appeared here, as I recall, specifically in London, was that they were saying: "We don't have any problem with you teaching somebody English who can't speak English, but why should that be funded by the compensation insurance program? If you want to

retrain them and see that as some role of government, go ahead." But you see, the income for this particular system is generated from a specific sector, ie, the business community, the management, whatever; the businesses' pay they generate is the only place this thing gets money. They don't get money from the taxpayer or from the government.

I think that is the reason Mr Carr was saying, "Why are people asking that this section be deleted?" I think what they're saying is, "Be specific in your training." If a plumber gets injured on a construction job, rehabilitate those individuals so that they're back to work at that job. But it's not our responsibility to teach them a whole new job or to teach them new skills that aren't even related to the job at which they were injured. I recognize that it's a catch-22, because if you just leave them sitting around and do not give them new skills with which to seek employment, then the burden on the compensation system becomes even greater.

I suspect that the royal commission—I don't know if they've set dates or anything—would look at this exact issue of whether there should be some form of universal accident disability. With all due respect, if you folks are still the government, which I would hope is not the case, universal disability is probably the hidden agenda behind that particular plan in any event.

But the real issue in this series of sections is whether or not the workers' compensation system should be a fix-all for all deficiencies in educational or vocational training. I think it is. I think it has become that and that injured workers, when they know, particularly in a recession—I mean, think about what happens. It's not the workers' fault. They get injured; they go off on compensation. The company retools or reorganizes, and in the tough times, in the recessions we've experienced, the jobs disappear. All of a sudden the worker's in a position to go back to the job, but the job doesn't exist. So what are you going to do? You train them for another job. Does that job exist?

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The member for Sudbury will well remember, as I remember her impassioned pleas on Bill 162, when she told us that if she had an opportunity, she and her government were going to tear that bill up and abrogate the deal, which of course didn't happen. But I shared the concerns that the member spoke about at that time about deeming and the phantom jobs, and in fact have recommended in our report that we eliminate that because I think it's unjust and it's one of the things that I think injured workers get most upset about.

But it's a much broader issue here. That is, frankly, why I think we were hearing deputations as to why these sections should be deleted. You delete them, though, and you wind up with other problems that you have to deal with.

I hope the government, I hope that the royal commission or, if they're not still around after the next change in government—this is an area we're going to have to look at and recognize that a business-premium-supported insurance program should not be solely responsible for all this kind of training and funding of it, and maybe there

has to be a new partnership arranged between government and business in paying for this kind of thing.

Ms Murdock: The royal commission is mandated to look at that very issue, and so it isn't a hidden agenda, I would point out, Mr Mahoney.

Mr Mahoney: What, universal? You're supporting universal?

Ms Murdock: Yes. The other thing is that subsection (11), which has raised this whole discussion, was brought in under Bill 162. So the whole issue, I presume, when 162 was presented when your party was the government, must have been discussed, the whole concept of responsibility of employer, whether their employee happened to be illiterate or not. I know a lot of focus was put on the deeming provision, but I'm sure that whole subsection (11) issue was not left without any discussion.

That, in our view, is not what is important here. What Mr Carr is mentioning or wants removed is the whole aspect of having the worker have assistance in seeking employment should the company no longer exist after rehabilitation has occurred, should that job no longer be there. If he has nothing to go back to, then he requires assistance. I think that's fair under any kind of insurance scheme.

Mr Mahoney: I would agree with that except for the argument and the question that comes from the people who say this is where you have to get really fundamental in defining what is the workers' compensation system. Is it a social safety net such as an unemployment insurance program—even that has a time limit on it—or a welfare program? Or is it an income replacement insurance program and a plan that rehabilitates the worker from the injury, physically rehabilitates the worker? Or is it in fact a job-seeking—you know, in times of recession, the jobs disappear. That's the point.

Even unemployment insurance, which supposedly is designed to help people seek replacement jobs because their job is definitely gone—that's why they're on UI, so it's designed to help them seek new employment—even it has a sunset on it. It's 42 months, I think, the time frame, and it's over. So there are some definitive—

Mr Len Wood (Cochrane North): Did you say 42 months?

Mr Mahoney: What's the UI time frame?

Mr Wood: It's not 42 months.

Mr Mahoney: No, what is it?

Interjection: Weeks.

Mr Mahoney: Weeks. I'm sorry. What did I say? Months? I'm sorry. Weeks. Yes, that would be nice.

Ms Murdock: The Liberals at the federal level will make it less, if possible.

Mr Mahoney: Pardon me. I meant to say 42 weeks. Thank you.

Ms Murdock: At least they're sure looking like they're making it less.

Mr Mahoney: But the point is that there is a definitive time frame on that of 42 weeks, when it's over. So it is more clearly defined, and I think that's what the deputations that were coming before this committee were

saying. This is wide open, open-ended, and there are no limits on how far you can go with this thing. So whether by design or by accident, it has become more than simply an income replacement system. I think that's very clear.

The question to ask is, when you're paying 90% of net pay during the time of the injury and the rehabilitation versus 55% or whatever percentage it is on UI, with a time limit—90% for a long, long time—that's what they're concerned about. It's got to be justifiable, affordable. The system has to be able to survive financially and there have to be some limits on the thing. That's what I heard the people saying when they were coming before this committee.

Interjection.

The Chair: Further discussion?

Mr Mahoney: Go ahead, give me another idea to talk about.

Ms Murdock: You qualified your own statement when you said "vocational rehabilitation" and then you said "physical rehabilitation," and I guess it comes down to a difference: Our viewpoint is that rehabilitation is the whole person, and it isn't simply improving, if possible, the physical injury of the worker but to make sure that the worker has work. He or she did not ask to be injured on the job, and they deserve to be looked after if they are.

Mr Mahoney: Every time somebody questions something about the workers' compensation system, I'm surprised you haven't started going on about workers dying here, because that's what happens: You bring out that they didn't ask to be injured on the job, and you bring out all of this stuff.

Ms Murdock: No, no. Please, Mr Mahoney. In all the years that I have been the PA here I've never done that, so why you would accuse me of that is beyond me.

Mr Mahoney: I'm sorry, the point of the matter is that the business community is very concerned that this is becoming an open-ended social safety net instead of an insurance plan. I'm simply trying to point that out.

Ms Murdock: Well, we could always go back to the days of suing.

Mr Mahoney: Mr Carr said he couldn't understand why there were differences between the legal department, and he understood the explanation and why the business community was upset. They're upset because they see this becoming, particularly under the NDP, the potential for an open-ended social safety net instead of an insurance plan, which is what it was originally designed to be.

The Chair: Further discussion? Seeing no further discussion on Mr Carr's motion, all those in favour? Opposed? Defeated.

Ms Murdock: Mr Chair, in regard to the schedule from Bill 43 under the Regulated Health Professions Act, I want to correct the record. I had said that there were 26, and there aren't. Under this list, there are 21 self-governing health professions. I just wanted the record corrected.

Mr Mahoney: Thank you, to the clerk, for getting us the list so quickly.

Ms Murdock: Yes.

The Chair: We have a PC motion again. Mr Turnbull.

Mr David Turnbull (York Mills): I move that subsection 53(13) of the Workers' Compensation Act, as set out in subsection 9(7) of the bill, be struck out.

This is in line with our reasoning on the previous motion, which you have struck down. The most problematic of this whole section is subsection 53(13), so this particular motion is more focused than the previous motion and goes to the very heart of the concerns that were expressed by the employers' community in that the provision could be abused and misused.

The Chair: Further discussion? Seeing no further discussion, all those in favour of Mr Turnbull's motion? Opposed? Defeated.

On section 9: All those in favour of section 9 as amended? Opposed? Carried.

A PC motion creating a new section, 9.1, Mr Carr.

Mr Carr: I move that the bill be amended by adding the following section:

"9.1 The act is amended by adding the following section:

"Board to assist employer

"53.1 On the request of an employer, the board shall assist the employer in developing return-to-work programs, accommodation programs and rehabilitation programs to assist in re-employing an injured worker."

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The amendment is designed to ensure that at the request of the employers the board would assist the employer in developing return-to-work programs, any accommodation programs and rehabilitation programs to assist in re-employing the injured worker. Of course, that's essentially what it says.

There were some groups that came forward. The Employers' Advocacy Council spoke to this issue during the public hearings. I guess the reason was that a number of presenters expressed concern that there's no provision to ensure that programs offered by the WCB are effective in meeting the objectives of returning the individual to the point of employability.

As we all know, having sat on some of the hearings as we travelled, that seemed to be the consensus of what everybody is looking at the WCB to do. I think at almost every stop we heard about it being the objective to get the employee back to work, and this I believe is an amendment which would be helpful in meeting that objective.

There is no provision right now to ensure that some of the programs offered by the WCB are effective. Certainly there has been some criticism of some of the programs. This amendment I believe will go a long way to improving this bill and that's the spirit in which it was brought forward.

Ms Murdock: Just for the record, the bill, in our view, does that in a less mandatory way under subsection 9(3). So we will not be supporting this.

Mr Carr: Obviously you agree with the objective then, so why are you saying "in a less mandatory way"?

Ms Murdock: I probably stand corrected on that—"On the request of an employer." We're saying, "The board shall provide the worker and the employer" assistance in vocational rehab, whether that be programming or whatever, if the board sees the appropriateness of it.

In some instances the employer may have a phenomenal vocational rehabilitation program in place. We heard presentations during the three weeks where some employers have worked very hard in instituting those programs, and then in other places they don't have any, so the board may not feel any need to go in, or it may simply be modification of a workplace, which allows vocational rehabilitation to take place. Their vocational rehab counsellor could feel it appropriate to go in there.

We think that our bill, in subsection (3), does that in that it's mandatory and that it "shall provide" it upon looking at the situation and not upon a request.

Mr Carr: What would the reason be then for the employers saying they'd like to have the opportunity to request of the WCB—

Ms Murdock: But they can do that now, Mr Carr.

Mr Carr: In what way? How can they do it now?

Ms Murdock: There are provisions, such as even in the appeal process, where employers can appeal as well as workers can appeal right through the final end. It's the same thing if an employer wants some assistance from the board to develop a vocational rehab program or a modified work program. The board is already in place to do that. "On the request of the employer," as your provision is suggesting, they can do that now.

Mr Carr: Yes, but through the appeal process, which is long—

Ms Murdock: I used that as an example, as one section of the act, that everything in the act pretty well is available to both employers and workers. We had some discussion during the hearings about penalty provisions under the voc rehab, in which the worker was penalized but the employer wasn't. That's about the only provision where it isn't equally treated.

Mr Carr: If the provisions are there and you're already doing it now—

Ms Murdock: No, no. What I'm saying is, on the request of an employer—if an employer were to call the board under the existing legislation, they could already get this. If the employer asks for it, just as if the worker asks for vocational rehab—

Mr Carr: If they can ask for it and get it, then why couldn't it be enshrined in the legislation, Bill 165?

Ms Murdock: Say this again?

Mr Carr: You're saying they can already get what I'm asking for in our amendment now.

Ms Murdock: Yes. What I'm saying is, if an employer right now calls the board and says, "We would like some assistance in developing a vocational rehabilitation program; can you send someone to discuss it or can we sit down and talk about it?" that can be done. But our section isn't on the request of anyone; it is that if the board feels that it's appropriate to go in and discuss the whole aspect of it, they can do so; it's not on the request

of.

Mr Carr: You just said they can request it now, so I don't see what the trouble is in putting it in the legislation through this amendment.

Ms Murdock: I guess it comes down to if they don't request it, but the board feels it should be there, then they should have the ability to at least make—particularly now that under our Bill 165, vocational rehabilitation is integral to the whole aspect of workers' rehabilitation.

Mr Carr: But it says, "On the request of the employer."

Ms Murdock: Yours does.

Mr Carr: Yes, right in there, so what they're basically saying is a lot of the employers—and it may be happening now, if you say it is—they'd just like to have it enshrined to ensure that if an employer requests, the board would assist the employer in developing a return-to-work program, an accommodation program or whatever; the board would comply. If they are doing it now, then I don't see why you couldn't agree to this amendment.

Ms Murdock: But by putting language in legislation that says, "On the request of an employer," the flip side of that is that if the employer doesn't request it, the board doesn't provide it.

Mr Carr: What happens now if they don't request it? It's up to the option of the board.

Ms Murdock: No, no. But it will be after Bill 165 and our provision is passed.

Mr Carr: Okay, but do you know what basically they're saying? They want to have some checks and balances here. Right now, as you sit here, you assume the board is going to do the right thing and you have to forgive some of the employers not to be non-partisan because they're mad at governments of all political stripes, not trusting them, and that's why this amendment was brought forward, to enshrine in the legislation that on the request of the employer they could get this action taken if they're requesting it. It's very simple, and to be able to—

Ms Murdock: What happens if the employer doesn't request it?

Mr Carr: Then what happens now would apply.

Ms Murdock: There's no provision in the act at the present time for the rehab counsellor to go in and do it.

Mr Carr: That's why this provision is needed then, so we can ensure that if an employer does request, action will be taken by the board. That's all they're saying. It's very simple.

Ms Murdock: Forgive me, and with respect, I don't think that is what you're saying, because "On the request of an employer" changes that to mean the employer is to request it before the board shall do the assisting. I'm saying that this shouldn't be only based on the request of the employer, although that's certainly beneficial. I don't think it should be the only requirement, but that's what yours is saying.

Mr Carr: What we're saying is that—and it could be other things as well if you say it's happening now

through various different means, then this doesn't preclude it from still happening. This is just saying—

Ms Murdock: Yes, it does.

Mr Carr: You mean, if this goes through, then the board wouldn't do it on their own, is that what you're saying, even though they're doing it now?

Ms Murdock: No, I'm saying that if this were to go through and ours were not—I would presume that's what you're suggesting—

Mr Carr: No.

Ms Murdock: They're adding to it.

Mr Carr: Yes.

Ms Murdock: You're saying that by adding this you're asking—then when an employer requests it. As I stated at the beginning of this, they can do that already. Perhaps I'm not understanding this clearly, but I don't see the need to restate it when it's already being done, or capable of being done.

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Mr Carr: The reason they want it restated is that they'd like to see it in the bill. That's why they want it restated. They'd like to see it in Bill 165, to make very clear the intention that if an employer requests the board, then it shall be done. That's all they're saying. You have to forgive groups if they sometimes don't trust governments for whatever reason. It may already be being done and that's all they're saying. If it's already being done, then let's put it in the bill. But we won't continue on, because obviously we're not making much headway in convincing you.

It just seems very simple to me that if it's already being done, then let's put it in there, and if you have no problems with the concept or any technicalities of the way it's written, then why not put it in there?

Ms Murdock: I graduated from law school and I don't want to say anything derogatory about lawyers, but when you put that kind of language in, you automatically give the ability to argue that it's only in instances that it's on the request of the employer, and that is not the intent of this bill. So as soon as that sentence is in there, you've got people who will go to appeal hearings and argue that; because that language is there, then you've precluded the other side.

Mr Carr: What do they argue now, then?

Ms Murdock: It isn't there. You're able to do that and there isn't any specific language that prevents it.

Mr Carr: Certainly Bill 101 doesn't mean—anybody knows that—putting something in doesn't preclude everything else.

Ms Murdock: Sorry, but I disagree with you. I think that if you had attended at any WCAT or hearings officer level or even a courtroom, for that matter, that's one of the reasons why, for instance, that I on a personal level have always been opposed to having a purpose clause and a preamble. As soon as you do that, you give lawyers all kinds of language ammunition and it allows for a lot of confusion. So I would say that on that basis alone I wouldn't agree to that.

Mr Carr: I'll agree with you that any time you give

more language to a lawyer you allow for more confusion.

Ms Murdock: It's true, though.

Mr Carr: I guess I'm coming from the standpoint that if you want to be clear about something and you want to avoid legal problems, then you spell it out. I guess as a lawyer you're telling me the more you put in, the more you give a chance to argue.

Ms Murdock: Yes.

Mr Carr: I'm just saying to you, then, what do they argue now? If all of a sudden the board doesn't, then what's the rationale for the argument now when we go to some of these discussions? At the present time there's nothing in there to say that the—or actually you're saying the employers are—

Ms Murdock: Have the ability of getting it, yes.

Mr Carr: —have the ability now. I'm just saying that it seems—maybe it's me—silly to add something to clarify and then to not want to put it in because we'll assume that the lawyers will make it more confusing. I don't buy that rationale.

Ms Murdock: We're going to agree to disagree, but I would say that specifically having the language "On the request of an employer" in there automatically precludes it; that without the request you don't get it.

Mr Carr: Mr Chairman, I won't continue on because—

Ms Murdock: No. I agree.

Mr Carr: —I know I usually don't win the battle even if I continue on. So there's not as much a point. But, like you say, I guess we're going to agree to disagree. It was offered in light of what the Employers' Advocacy Council had wanted put in there and I just thought it was something we could live with. But obviously we're going to lose the vote, so we probably should continue on, unless anyone else would like to speak to it.

The Chair: Further discussion? Seeing no further discussion, all of those in favour of Mr Carr's motion? Opposed? Defeated.

On section 10, Liberal motion, Mr Mahoney.

Mr Mahoney: I move that subsection 54(11.1) of the Workers' Compensation Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Same

"(11.1) On its own initiative, the board may determine whether the employer has fulfilled the employer's obligations to the worker under this section, if the employer's accident record for the most recent year for which records exist exceeds by more than 15% the industry average for that year, as determined by the board.

"Same

"(11.2) If an employer was not an employer to which this section applies in the most recent year for which accident records exist, the board, on its own initiative, may determine whether the employer has fulfilled the employer's obligations to the worker under this section, if the employer's accident record for any six-month period exceeds by more than 15% the industry average for that period in the most recent year for which records

exist, as determined by the board."

This is, very simply, an attempt to put some benchmarks in. The thing we heard at so many of the hearings we had was that people were somewhat frightened by the unbridled, open-ended ability of the board to make determination. We heard a lot about the fears around dismantling of the NEER program and concerns also that under this act the minister of whatever party will have complete control of the ship of state, so to speak, for a period of one year following the act. So there was a request, a desire, by the business community to have in place some guidelines that it could understand.

The other thing that does provide for incentives, I think, for the business community to reduce its accidents, which ultimately I'm sure is what all of us in this place would like to see happen, but it puts in place some targets, some goals. Hopefully they would do better than is even indicated here, but it gives them some clear guidelines to follow. So we supported that.

We think that either way in this regard there is a certain amount of cumbersomeness, I guess you could say, as to whether or not it be simply left to the initiative of the board, with no benchmarks or guidelines to follow, or if you indeed put in place a percentage guideline of the industry average that at least gives you something to measure.

All of those statistics are kept by the board, so it's not like we're just pulling something out of the air. Everything's put in place and there would be a measurement stick, and if the decision was made without following that guideline, then there would at least be some recourse by the company. So that's why we've done this, and of course the second one would identify new employers where records did not exist and allow for a six-month time frame to be used.

Mr Carr: The whole problem with this section is that it gives the WCB on its own initiative, without any triggering mechanism as a complaint, the sweeping power to investigate whether an employer has fulfilled its obligation to a worker's vocational rehabilitation, and there was a tremendous amount of concern that was put forward. I think the Ontario Hospital Association, the Board of Trade of Metropolitan Toronto and the Employers' Council on Workers' Compensation had some major concerns that were put forward, and I think this particular amendment adds some clarification. I'm hoping we'll get some rationale from the parliamentary assistant if we're not going to proceed with it, just a short one, and if not, maybe she'll support it.

Ms Murdock: I can give you my rationale; I don't imagine it's going to be satisfactory to you, however.

Mr Carr: You never know.

Ms Murdock: Our section 11 is an amendment to the existing section 11. If you look at section 11, a worker may apply to the board for a determination whether the employer has fulfilled the employer's obligation. We were asked during the public hearings for clarification. We think that our section 11 in the bill does that, the clarification. I think that the Liberal amendment not only makes it much more complicated but sets up a number of

potential consequences that would be problematic later on, and I'm not prepared to support the amendment.

The Vice-Chair (Mr Len Wood): Any further debate? All those in favour of the Liberal motion? All those opposed? The motion is defeated.

Shall section 10 of the bill carry?

Mr Mahoney: Mr Chair, maybe we should do an omnibus motion here to put the rest of these and take the same vote and let's go and do something that's accomplishing something. What do you think? Take this into the Legislature?

The Vice-Chair: All those in favour of section 10? Opposed? Motion carried.

Ms Murdock: Could we have a five-minute recess, please, Mr Chair?

The Vice-Chair: This committee will stand recessed until 5:05.

The committee recessed from 1701 to 1709.

The Chair: I'd like to call this committee back to order. We now have a government motion on section 11.

Ms Murdock: I move that the portion of subsection 56(1) of the Workers' Compensation Act preceding paragraph 1, as set out in section 11 of the bill, be struck out and the following substituted:

"(1) There shall be constituted for the government of the corporation and for the exercise of the powers and performance of the duties of the board under this or any other act a board of directors composed of the following members:"

The Chair: Discussion?

Ms Murdock: Actually, we inadvertently omitted this from the subsection, so we're correcting it.

Mr Mahoney: Just help me, please. Does this replace subsection 56(1) on page 3 of the bill, Mitch? Is that what that's doing?

Ms Murdock: Yes. "There shall be constituted" instead of "The board shall be governed." Just the beginning part.

Mr Mahoney: Could we just get an explanation as to why, for the exercise?

Ms Murdock: It's to clarify that the board of directors is responsible for the government of the board and for the duties of the board as provided under the act, and the reference to "the powers and performance of the duties of the board" as stated in the act, which we're correcting in this amendment that we're putting forward today, which is not stated in the bill.

Mr Mahoney: Should it not read, "There shall be constituted for the governance of the corporation" rather than "the government"? Am I being picky?

Ms Murdock: I'll let Mitch explain it to you.

Mr Toker: The wording in the motion matches the current language used in subsection 56(1), which begins, "There shall be constituted for the management and government of the corporation and for the exercise of the powers and performance of the duties of the board."

Mr Mahoney: I can see where it comes from, because it matches. It still strikes me it's wrong in both

cases, because what you're really referring to is governance. But maybe I'm just being picky in the English language.

The Chair: Seeing no further discussion, all those in favour of Ms Murdock's motion? Opposed? Carried.

We now have a Liberal motion.

Mr Mahoney: I move that subsection 56(1) of the Workers' Compensation Act, as set out in section 11 of the bill, be amended by striking out paragraph 1 and substituting the following:

"1. Four directors representative of workers, including one member of the Ontario Network of Injured Workers, to be appointed by the Lieutenant Governor in Council."

If you're reading this motion, I would ask you to note a change. I would point out that the words "Union of Injured Workers" should read specifically "Ontario Network of Injured Workers."

The Chair: Discussion?

Mr Mahoney: Just that if there was one thing I heard repeatedly during the outreach tour and all of the subsequent meetings and consultations that I had on workers' compensation reform prior to us releasing our report, and continued to hear at the hearings of this committee and have heard from people such as Karl Crevar and others who have been dedicated to finding a solution to the problems of injured workers, it's that you've got to talk to the people who live and breathe this system and who have to work within the bureaucracy that exists to give you clear-cut advice on how the solutions to this situation can be arrived at. We've got to involve injured workers in giving advice to the board and clearly laying down the policies.

I know that in the past we've had representatives of injured workers sitting on the board at the pleasure of the Premier or the Minister of Labour. Steve Mantis was a representative who appeared before us in Sault Ste Marie, and I know he's done a lot of good work. But I think it's important that we put it in black and white, we put it down and we make a firm commitment and we be very specific, because I believe this organization is highly respected within the injured worker community, within organized labour, and that indeed they can bring a lot to the table.

I think it's important not only that we take advantage of that, but that then has them sort of buy into the process as well. So it will work both ways. We will have an opportunity to communicate. The board will have an opportunity to communicate decisions directly to the injured worker community, and the injured worker community, which has such a huge stake in this entire process, will feel that it has a voice sitting on the board and will have someone at the table.

I would hope this would be unanimous, all three parties, so that we could send a message to the injured workers that we've heard them and that we specifically recognize that they need to be identified really separately and in a very special way. That's why we've put this motion forward.

Mr Steven Offer (Mississauga North): I would like to hear the response by the government to this amend-

ment.

Ms Murdock: As we all know and we heard multitudinous times during the public hearings, these whole sections were devised by the Premier's Labour-Management Advisory Committee, and we're abiding by what they decided.

Mr Mahoney: Well, where else are you doing that?

Ms Murdock: See, now, that's where you and I disagree on this, because this whole deal is—

Mr Mahoney: You're telling me that you're not prepared to support this amendment because the PLMAC process did not recommend it? Is that what I hear you saying?

Ms Murdock: I think that the four directors representative of workers can include that, absolutely, but I—

Mr Mahoney: Can include what?

Ms Murdock: Well, it can include injured workers as well as others, as long as they're workers. So I don't think it precludes injured workers or I don't believe it precludes the Ontario Network of Injured Workers either.

Mr Mahoney: I'm not asking whether or not it precludes; obviously it does not. But it does not include; it does not specify. You heard many, many times during the committee hearings that injured workers want you, or whoever subsequent to you, and the Workers' Compensation Board to listen to them because of the firsthand experiences they have. A worker who has never been injured and has never been through the process would not have the same understanding as a worker who indeed had either been injured or who had worked for and on behalf of injured workers, such as the Ontario Network of Injured Workers has done.

I would think it's safe to say that certainly most, if not all, of the people who wind up working in organizations like this have wound up there as a result of an experience coming from an injury on the job and the problems they've had in dealing either on their own behalf or on behalf of members of their family or on behalf of members of their local or whatever in dealing with the Workers' Compensation Board. So to hide behind the excuse that the PLMAC didn't suggest this is absolutely mind-boggling.

There are many, many areas in here where you did not agree with the PLMAC. Gord Wilson came forward and said this mirrors the PLMAC. I've often said it must be one of those mirrors they use at the Canadian National Exhibition that makes me look tall and slim, because it does not mirror the PLMAC agreement in any way whatsoever, and I find that response to be an absolutely feeble response.

Why don't you just come out and say that you don't want to specifically name this group to sit on the board? I'd accept that as a defence or as a position that you're taking on behalf of the government, that you don't want the Ontario Network of Injured Workers to have a place at the table. If that's what you're saying, say it. Don't tell me that it's the PLMAC that won't allow you to go for this amendment. Absolute nonsense.

Ms Murdock: Well, when you look at it, it doesn't specify small business, it doesn't specify construction, it

doesn't specify mining or public sector workers. It doesn't specify anything, and in legislation I think that's wise.

1720

Mr Offer: You're right about small business and mining and all of those things. The problem you have is when you take a look at the purposes of the act, the purposes that you devised. The purpose of the act is, in the government's own words, "to provide fair compensation to workers who sustain personal injury."

It goes on and says something else: "(b) to provide health care benefits to those workers." Those are injured workers. "(c) to provide for rehabilitation services and programs to facilitate the workers' return to work." Those are injured workers. "(d) to provide for rehabilitation programs for their survivors." We're talking again about the injured worker issue.

So in your own words, the purpose is all geared to the injured worker. You've just passed an amendment which says that the governance of the act is going to be by a board of directors. You had to change the wording; that's fine. But all of the purposes are geared towards the injured worker. How can you not have on the board a representative of injured workers? How is it?

I don't care what your politics are. I don't care what the feeble excuses are, but how is it, when there is an act that has as its sole purpose—I don't care how many subsections to the purpose you have—assistance to injured workers and has a board which governs how that assistance is to be meted out, that you don't have a representative of injured workers?

How can you in any way, shape or form—I don't care what party you're from, I don't care what politics you profess to support—how is it that an act which is geared toward the injured worker does not have on the board an injured worker? How is it that people can have any sense of contentment that the board is going to act in the best interests of injured workers, when the government is specifically excluding as of right?

Ms Murdock: We're not excluding as of right.

Mr Offer: Oh, don't tell me that, because you are. You are excluding as of right an injured worker on the board. You are saying that an injured worker does not have as of right a position on the board; rather they are going to be at the behest of someone else. If someone happens to choose one, well then they're on. But if they don't, they won't be on. So there is no as of right.

Putting aside the politics and all of that stuff, the point is that injured workers rely on this act. The purpose of the act is geared towards injured workers. How is it that we can take away or not give to the injured workers—and let them worry about how they're going to get that representation—that one can justify that they should not have the right to be on the board that governs an act which has as its purpose solely injured workers in this province? It is absolutely ludicrous not to agree with this amendment. It throws the whole bill that's before us into just total disrepute.

Mr Mahoney: Not to mention the comments made in the past that you would support such a thing.

Mr Offer: How can you justify not allowing people who are going to be the primary purpose of the legislation the opportunity to share how this act and how its evolution should take place, a position on the board? How do you guys do it? I now point to the members of the NDP government. How do you do it? How do you not support this amendment? How do you say to people that in the act that was supposed to be for their own purpose you're not going to allow them a position on the board? How do you in your own mind, casting aside party politics, justify your voting against this amendment? Forget about the parliamentary assistant. How do you do it? How do you do it, Shelley?

The Chair: Mr Turnbull.

Mr Turnbull: I'm somewhat surprised that the government isn't supporting this amendment. We heard from successive presenters at the hearings that injured workers wanted to have a say at the table. They don't want to take over the board. They just want to at least have some say at the table. It seems appropriate that the very people we're ensuring should have some input, much in the same way all interested parties have a right to sit around a table and discuss their grievances. So we will be supporting this amendment. Indeed, Mr Chair, I would like to have a recorded vote on this issue.

The Chair: So noted. Further discussion? Seeing no further discussion, all those—

Mr Mahoney: No answers from the government to Mr Offer's questions? I'm appalled.

The Chair: All those in favour of Mr Mahoney's motion?

Ayes

Mahoney, Offer, Turnbull.

The Chair: All those opposed?

Nays

Martel, Murdock (Sudbury), Sutherland, Waters, Wood.

The Chair: Defeated.

We now have a government motion. Ms Murdock.

Ms Murdock: I move that paragraph 3 of subsection 56(1) of the Workers' Compensation Act, as set out in section 11 of the bill, be amended by striking out "paragraphs 1 and 2" in the last line and substituting "paragraphs 1, 2 and 4."

The Chair: Discussion?

Ms Murdock: It's a housekeeping matter.

Mr Mahoney: Could either the parliamentary assistant or the staff tell us what it means just so we're not getting tricked into something here?

Ms Cohen: This is just correcting an omission in the bill. In paragraph 3, the two directors representative of the public are appointed on the recommendation of the four directors representative of workers and four directors representative of employers, and inadvertently we left out the two vice-chairs representative of workers and employers in paragraph 4. The policy goal here is to have the two directors representative of the public be appointed on the recommendation of all the other directors. We simply left out the reference to paragraph 4 inadvertently.

Mr Mahoney: So of the two other people who will be appointed, one will be appointed by the labour caucus and one by the management caucus, or will there be a consensus by the two groups on two people? How's that going to work?

Ms Murdock: That's one of the reasons I know we've heard a lot about the year that the government is going to have control of the Workers' Compensation Board, but the whole point is so that the members of the board can sit down and work out their own protocol as to how those things are going to be done. The idea also in the discussions has been around joint recommendations, so that will be decided by the players themselves.

The Chair: Further discussion? Seeing none, all those in favour of Ms Murdock's motion? Opposed? Carried.
1730

Mr Mahoney: I move that section 56 of the Workers' Compensation Act, as set out in section 11 of the bill, be amended by striking out subsection (2).

The Chair: Discussion?

Mr Mahoney: I don't really have anything to add.

Ms Murdock: The WCAT.

Mr Mahoney: Yes, I'm sorry. Thank you very much, to the parliamentary assistant. I was reading the other subsection (2).

The concern we have here is surrounding WCAT and the process that currently exists in the board. It's in some instances perception, but also in some it's reality. You have an appeals tribunal that people would tend to think is independent and would have an ability to make decisions interpreting WCB policy on its own. Unfortunately, what's happening is that many of their actual decisions become policy. I guess because of the scope of some of the issues they have to deal with, they're seen as a group that almost goes beyond and above the powers of the board and sets new policy as a result of some of their decisions.

It almost puts them in a position of a conflict of interest to have them there as a non-voting member. I don't support non-voting members in any scenario, virtually, of any board. If you want a separate advisory group on appeals to advise the board in some way and have professionals, staff, bureaucrats, someone like that advising the board of the relationship between an appeal and their policy as to whether or not perhaps they've superseded their mandate by making a decision—think of it in terms of a court of law, where a court of law would make a decision on the law that was before them, hearing arguments from both sides, and would then make a decision. They should not—although I suppose they do at times, but they should not—be writing the law sort of on the spot, ignoring the policies of the lawmakers. Unfortunately, the appeals tribunal clearly has been doing that and has the right to do that.

We would actually rather see WCAT set up under separate legislation as quasi-judicial, with its own mandate clearly laid out. In fact, we believe the appeals process should be simplified such that you get to the WCAT appeal hearing quicker. They should be fast-tracked and get the cases in there much quicker. I think

the comment I heard at one of our outreach programs by some lawyers who deal in appeals is they see WCAT as being the light at the end of the tunnel, and they'd like to get their clients to WCAT as quickly as possible.

I could see a good news-bad news thing there. They probably like to because they realize they might get a decision that will be somewhat irrespective of the position of the board and they're not hamstrung, whereas the decisions made internally within the board would clearly have to follow the policies of the board, but WCAT does not have to do that.

I don't think they have any place sitting on the board. They should be a court. I recognize they would not be set up in a judicial fashion, but they should be quasi-judicial. I, for example, do not support MPPs interfering in that particular process. I think it should be equally as distasteful for an MPP to go through and represent an appeal process, which I know many members do. I do not. My staff will certainly inform the injured worker of what that process is.

Interjection.

Mr Mahoney: Mr Mills is saying he doesn't do it either, but many do, and I think it's wrong, because whether we want to admit it or not, there is always the potential for the appearance of influence and that kind of thing to be taking place at the hearing level.

We hear about members writing letters to boards or cabinet ministers influencing decisions of boards at all levels of government. I don't mean that in any partisan way whatsoever; we've heard about some of that recently in Ottawa. I frankly think that's wrong. I don't think that kind of thing should be allowed.

When you have a system where you have conflict-of-interest guidelines—we're currently dealing with amendments to that—for members, you have premiers putting in guidelines—David Peterson brought some in; Bob Rae has brought some in—one of the sorts of underpinnings of those guidelines and that whole principle is that there should be rules certainly for cabinet ministers not to unduly influence a body making a decision that could result in some kind of financial reward for an individual citizen, taxpayer, company or whatever. I think the same thing applies here.

I would like to see major changes, and obviously they're not going to come forward in this bill. Again, the opportunity for that could come up with the royal commission or, if the royal commission does not survive the change to a new government, it could come up in a major reform package which would clearly set WCAT out as a separate entity.

I would tell you—frankly, I think this is very important because of the structure of the board—the story of the person who appeared before our outreach tour committee in Thunder Bay who made his living running a bridge repair company. He used, and I often use his example, the example of when you are repairing a bridge, you don't start at the bottom because when you start chipping away at the foundation the whole thing may come tumbling in on you.

He said the same thing is true of reforming WCB, that

you don't start at the bottom, that you've got to start at the top, starting at the top with the depoliticization of the appointment process, the establishment of the board, the multistakeholder concept of the board. The structure that you're going to put in place for the governance of the workers' compensation system is critically important.

As a result, that's why we argued, and my colleague Mr Offer argued so passionately, for the inclusion of an injured worker representative on the board. I would also argue, in a reverse scenario, not to include the chair of the appeals tribunal on the board but rather to get people who are clearly stakeholders.

WCAT should not be a stakeholder. They should be a court of appeal, a different track for an injured worker or their representatives to take, and should be seen in the purest democratic sense as a group that is over and above any kind of influence, ie, sitting around a boardroom table listening to workers and listening to management representatives arguing on behalf of their particular groups in a bipartite system such as this one.

Why would we want the chair of this appeals tribunal there trying to be influenced by what goes on at the board? Their responsibility should be, it's very clear to me, to receive the policies that are arrived at after the debates take place at the board, presuming there are debates that take place at the board, and the policies are issued that say you will offer compensation for these injuries, to set out the benefit levels and all of the things that drive the administration of the board, so that when you as an injured worker go before them you say: "We think we've been unfairly treated. We were not compensated properly. They didn't recognize our injury as being an injury that occurred at work. We have evidence to show that it does. We have precedents to show that other workers have been awarded on this basis and we think we're being discriminated against and we want you, Mr or Mrs or Ms WCAT Chair, to make a decision that's based on the policies and the guidelines and the precedents that exist in law under the WCB."

1740

We think that kind of structure would be far superior, would make common sense. We think it would do a lot, frankly, to help MPPs' offices, which is not the motivation but certainly a side benefit out of it, and also to clarify for all elected representatives and for all people who run for office—because particularly in the government party but in all parties we wind up with candidates who come out of the labour movement and who come out of injured workers—that your role is to guide the injured worker into the system, to make sure the doors are open to allow the injured worker to go through the process, to perhaps refer them to the office of the adviser of the injured worker or the worker adviser, or in the case of the employer, to the employer adviser, and to make sure they know all of that. But you are not allowed to unduly influence the decision that might be made at any particular level.

I think it's more or less a given that there may be a perception out there in the public that because you're an MPP, because you're an elected official, you can just fix things for people, but the reality is that we know those

days, if they're not gone, certainly should be gone and that that's not the proper role of an elected representative but rather one to guide. So that's an aside from the thing.

But this is the place to start. We start at the top with the makeup of the board. The next step—this bill doesn't go far enough, but I would hope that we'll have an opportunity to take that next step with a future government where we could in fact establish WCAT under its own separate, quasi-judicial legislation with guidelines that would be very clear for all to see. But the first step in repairing this bridge called workers' compensation is to start at the top with the makeup of the board. You've turned down the one that I think is the most critical one, the inclusion of an injured worker on the board. I would ask you to support eliminating the chair of the appeals tribunal. At least that would be a step in the right direction.

The Chair: Further discussion?

Ms Murdock: Just very briefly, the chair of the appeals tribunal is a non-voting member of the board of directors. The non-voting aspect has not been mentioned in any of Mr Mahoney's comments.

Mr Mahoney: I mentioned it, Mr Chairman. I would correct the parliamentary assistant. I absolutely mentioned they're a non-voting member.

Ms Murdock: Okay, I apologize.

Mr Mahoney: I said at the beginning that I don't support non-voting members of boards of this nature under any circumstances. I don't know why you would ask someone to attend. Are you simply—not you personally but you generically—trying to influence that person by having them sit through a board meeting where they have no vote and no say just so they can hear the arguments, or are we having them there to contribute to the debate? Frankly, I would almost go so far as to say, if you're going to make him a voting member, put him on the board. But we don't think they should be on the board, whether they're voting or non-voting. So I did make that remark.

Ms Murdock: In 1985, Mr Mahoney, when WCAT was first instituted under Bill 101, the whole point of having WCAT in place was because there was dissatisfaction with the appeal mechanism within the board at that time because all of the appeals were done by board personnel within the board administration, and it was felt by the government of the day that there had to be an outside mechanism.

I think that when they instituted WCAT, that meant then you still had to go through the three appeal processes within the board—claims adjudication, decisions review branch and hearings officer—and that all done within the board administration, and then that there be an outside agency to make determinations that looked at the merits and the set of facts before it on each individual case, and that they're bound by the act but they're not bound by board policy.

It was also felt at the same time that the chair of the board should sit in the board of directors' meetings so that he or she would have a sense of—I'm echoing here—what the policies and the discussions around those

policies by the board of directors would be. That is the whole purpose of having, in this case, Mr Ellis sit with the board and have no vote. So we're not about to change that.

The Chair: Further discussion? Seeing no further discussion, all those in favour of Mr Mahoney's motion?

Mr Mahoney: Recorded vote.

The Chair: All those in favour?

Ayes

Carr, Offer, Mahoney.

The Chair: All those opposed?

Nays

Martel, Mills, Murdock (Sudbury), Sutherland, Waters, Wood.

The Chair: The motion is defeated.

We now have a PC motion. Mr Carr.

Mr Carr: I move that subsection 56(1) of the Workers' Compensation Act, as set out in section 11 of the bill, be amended by striking out paragraph 5 and substituting the following:

"5. One chair, to be appointed by the Lieutenant Governor in Council on the recommendation of the board of directors."

And I further move that the following subsections be added to section 56 of the Workers' Compensation Act, as set out in section 11 of the bill:

"Same

"(2.1) The president of the board is a non-voting member of the board of directors.

"Directors representing workers

"(2.2) The directors appointed under paragraph 1 of subsection (1) shall be appointed on the recommendation of a committee of five representatives of workers appointed by the Lieutenant Governor in Council for the purpose of recommending directors. One of the representatives shall represent unorganized labour and one shall represent injured workers.

"Directors representing employers

"(2.3) The directors appointed under paragraph 2 of subsection (1) shall be appointed on the recommendation of a committee of five representatives of employers appointed by the Lieutenant Governor in Council for the purpose of recommending directors.

"Full-time directors

"(2.4) One of the directors appointed under paragraph 1 of subsection (1) and one of the directors appointed under paragraph 2 of subsection (1) shall be appointed to serve full-time."

This just goes a little bit further than some of the discussions we had over the last amendment. What we have done, and I guess the real key is similar to the Liberal motion, is having a representative of the injured workers, as well as unorganized labour, because as you know, there could be some potential criticism of some of the labour representatives being from simply the labour movement. So we've included an unorganized labour representative and one representative of injured workers,

and we are fairly broad in the injured workers to allow the discretion, as opposed to the Liberals, which I think was a little bit more specific.

Also, as it goes on to say, it ensures the president of the board is a non-voting member of the board of directors, it ensures that the chair is appointed by the Lieutenant Governor on the recommendation of the board of directors, it ensures one representative of the board and one representative of the workers' member of the board shall serve on the board of directors in a full-time capacity, and it also ensures the director is appointed by the Lieutenant Governor on the recommendation of representative groups of workers and employers. I think this is something that was called for during some of the hearings. There were various groups that came forward and presented that; the CFIB is one representative.

In the PLMAC reform framework recommendation, the president is included as a member of the board and the chair is clearly assigned the role of mediating impasses between other parties. We've incorporated these two into our amendment.

Also, we wish to ensure that the interests of the unorganized workers are represented. There have been situations in the past where the board of directors' decision was inadequately communicated to the administration for whatever reason, which resulted in delay and confused implementation.

We think this particular amendment will deal with that, and I suspect that the presence of the president of the WCB at the board of directors' meeting would ensure that the WCB administration clearly understood and could undertake to accurately and effectively implement the board of directors' decisions. With some of the concerns that have been raised about that happening, I guess I believe at the end of the day that through our elected officials in the appointment of the board of directors, they must be the ones that make the final decisions.

1750

I know some of the people at the board may find that difficult at times to accept, knowing that they know pretty much what goes on and what should go on, but very clearly the elected representatives of this province, who then appoint the board of directors, should have final say. I think that's a very critical point, that the president be there, take the direction and make sure that it's fully implemented, and this amendment will ensure that it's done.

Ms Murdock: I find it sort of incredible that this amendment would require an entire new strata of appointment officers appointed by the Lieutenant Governor in Council to determine who is going to sit on the board, which in my view would be even more bureaucratic than the system already is, and I think all of us would agree that it is.

I know that the intent of the Conservatives was to try and make this a more rounded process and that the appointment of the people who would be sitting would be selected in a manner that was less—what's the word I'm trying to think of?—polarized or politicized. But I don't think the way this is worded would do what is the intent

of the Conservatives, so I will not be supporting it.

Mr Carr: I know the people who may have taken a lot of the flak in the past have been the front-line workers, who seem to get the criticism, and that is unfair. A lot of the problems go back many years under different administrations of all political stripes.

The direction that has been put forward by the WCB has created the problems. In my mind, you don't blame the people lower down; you blame the board of directors and the people higher up. So if we do have any failures with the WCB—and as you know, WCB is now being referred to as standing for "wackos control billions."

There is much criticism out there from everybody, whether it's injured workers, the employers, the various groups that are very critical, and where we have lost direction, it seems to me, is at the board level. The commission is going to go look through and decide what's going to happen whenever it reports. I believe that the board of directors is critical to the way the board is being run.

For you to say that it's going to create another large layer, the board of directors in any corporation should be setting the direction. Boards that run efficiently, whether it's boards of directors at banks—some of the numbers go up as high as probably close to 30 on some of the major banks' boards of directors. You're not adding a lot of cost to the system because we would also be looking at a situation where the board of directors does not get a substantial amount of pay.

But what happens on most boards of directors, whether it be banks or in the private sector, is that you get a good group of professionals who then break off into committees of the board and actually get something done. It seems to me that if we have any criticism of the board of directors over the past, it's that the directions haven't been put forward to the administration and the people doing the work at the board. So one of two things happens: Either the board is giving poor direction or it's not being implemented by the people who are underneath the board of directors.

I think we can do a much better job. I think the board has to take the major responsibility for some of the problems, although I guess if you talk to some of the board members, their feelings probably always were that the problems weren't created by the board, that they were created by the system and the direction the governments gave to them. That's no criticism of this government because you weren't around for a lot of the years when the problems came forward. It just seems to me that we have to tackle it at the board of directors level. What the present system is and what the government is proposing to do I don't believe will do that.

Having said that, I guess the big element and the big key is that the quality of the people who get put on the board is probably more important than the actual structure. Of course, that's a decision of the government of the day. But I just take a look at it and see what we're talking about in terms of the board structure. It seems to me it would be simple management practices.

As we've had some of the discussions over the past amendments, when we got into some of the legal questions I referred to the fact that I didn't have a legal background but my background is in business. When you look at the structure that we're proposing and putting forward, I think it is something that, if you were to take a look at it from a purely business standpoint and a management standpoint, is a workable and a very effective board of directors. That's why we put this particular amendment forward.

Again, I suspect that we're not going to be able to get this passed, but when I take a look at the amendment and the structure we're putting forward, I think this would add greatly to the bill.

Mr Mahoney: I'm a little surprised. First of all, the comment made, I think, was that they don't get a lot of money or something.

Interjection.

Mr Mahoney: No, not by Mr Carr. I heard a reference to the—

Mr Carr: Board of directors.

Mr Mahoney: Well, they get 200 to 400 bucks a day. I couldn't tell you how many days they sit, but it's quite a few. I would tell you that one of the recommendations we made actually is that we should go to an honorarium, a buck a year, and that people should be seconded, both from labour and from the private management sector, to come in and work on the board and resolve these problems. Now, I've received some comments from people who say you'd never get anybody to do it for a buck a year; I think you would.

I think there are a lot of people out there. They'd have to be seconded. You wouldn't have someone who worked for the Steelworkers, for example—we're going to run out of time here, but I think this particular motion sets up two new committees, appointed by the Lieutenant Governor in Council, whose members would also be paid 200, 300, 400 bucks a day to recommend people. I just think it's more bureaucracy and it sounds to me like it runs counter to some other thing I heard about a Common Sense Revolution; I don't know.

The Chair: In light of the fact that I think there will be more discussion, this committee will stand adjourned until Monday.

The committee adjourned at 1758.

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*Mr Mackenzie / Loi de 1994 modifiant la Loi sur les accidents du travail et la Loi sur la santé
et la sécurité au travail, projet de loi 165, M. Mackenzie* R-1443**

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Carr, Gary (Oakville South/-Sud PC) for Mr Jordan
Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Conway
Sutherland, Kimble (Oxford ND) for Mr Klopp

Also taking part / Autres participants et participantes:

Ministry of Labour:
Cohen, Sherry, legal counsel
Murdock, Sharon, parliamentary assistant to the minister
Toker, Mitchell, manager, workers' compensation unit

Clerk / Greffière: Manikel, Tannis

Staff / Personnel: Hopkins, Laura, legislative counsel

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Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Monday 21 November 1994

Journal des débats (Hansard)

Lundi 21 novembre 1994

Standing committee on
resources development



Comité permanent du
développement des ressources

Workers' Compensation and
Occupational Health and Safety
Amendment Act, 1994

Loi de 1994 modifiant la Loi
sur les accidents du travail et la Loi
sur la santé et la sécurité au travail

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Monday 21 November 1994

Lundi 21 novembre 1994

*The committee met at 1544 in committee room 1.*WORKERS' COMPENSATION AND
OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL
ET LA LOI SUR LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

The Chair (Mr Mike Cooper): We're continuing with our clause-by-clause analysis on Bill 165.

Before we resume the debate on Mr Carr's motion, just to let all members of the committee know, we have a second replacement on government motion number 14. We have version 2 now. It's in front of each of the members.

Mrs Elizabeth Witmer (Waterloo North): Which section? Section 7 of the bill?

Ms Sharon Murdock (Sudbury): Yes, and it's now at the top of the next page, but if you look at the other one, it's in subsection (5.1), in "the net average earnings in clause (3)(a)" and we had "(b)" in the other one and it should be "(a)." That's the only difference.

Mrs Witmer: Before we begin, could you just bring us up to date? I understand that there's going to be time allocation on this bill to be discussed in the House on Wednesday. Is that so?

The Chair: Ms Murdock? Anybody?

Ms Murdock: I believe there's a time allocation motion being introduced for debate in the House this afternoon.

Mrs Witmer: This afternoon?

Ms Murdock: It has to be done the day before, for tomorrow.

Mrs Witmer: For tomorrow?

Ms Murdock: Yes.

Mrs Witmer: So this in essence could be the last day of committee on Bill 165?

Ms Murdock: My understanding is that we would have to come back into committee for one day in order to complete the clause-by-clause debate.

Mr Steven W. Mahoney (Mississauga West): As opposed to committee of the whole?

Ms Murdock: Yes.

Mr Mahoney: So there'd be no committee of the whole in the time allocation motion. It will be done here.

Ms Murdock: I haven't seen the time allocation, Mr Mahoney, and I don't know if the House leader read it in at the end of orders of the day, but I know that it's on the agenda to be introduced, as the rules say, by 5 o'clock the day before you intend to debate it. So it's supposed to be in today.

My understanding, because I will not be here this Wednesday, is that we would come in on Monday for the last day of committee.

Mrs Witmer: So we won't be in here Wednesday for committee.

Ms Murdock: Right.

Mrs Witmer: I wonder if somebody could get us a copy of that motion before we leave here today so everybody knows exactly what's going on. It appears there won't be that opportunity then for full debate in the House.

Ms Murdock: If it hasn't been introduced into the House yet, I don't think you can, can you?

The Chair: In fairness to everybody, I believe the time limit for tabling it is 5 pm this afternoon and then it would go to the clerk and then it would show up in Orders and Notices for tomorrow. So until 5 o'clock, it may not even be tabled with the clerk.

Ms Murdock: That's right, and if isn't tabled by 5, then there is no debate tomorrow. But my understanding is that this is what the agenda is.

Mrs Witmer: Our House leader was alerted, so I know it is happening.

The Chair: Thank you. If we may proceed, on Mr Carr's motion, and it's number 33 in your books.

Mr Mahoney: I have 32 and 34. What happened to 33?

The Chair: Number 33 was the one we were discussing last on November 16.

Mrs Witmer: What is that motion?

The Chair: Section 11, paragraph 5 of subsections 56(1) and 56(2.1), (2.2), (2.3) and (2.4). Any further discussion? Mr Mahoney.

Mr Mahoney: As I read this motion, this would establish two committees of five people on each, five representing labour and five representing employers. The purpose of these committees would be to appoint members to the board. It seems a little bit either bizarre or unclear that they would be by order in council, "appointed by the Lieutenant Governor." I presume they

would be nominated by the government and I don't understand it. If this is an attempt to somehow depoliticize the appointment of people to the actual board, it's kind of strange that you'd politically appoint 10 people, with no reference to what they would be paid. We know that board members today receive remuneration in the neighbourhood of \$200 to \$400 a day when they meet.

We don't have any indication under this as to what these committee members would receive, and it seems to me that it sort of runs contrary to everything I've heard from the Conservative caucus, that it sets up another layer of bureaucracy to make decisions. I can't support this. I don't know if Mrs Witmer wants to make an argument in favour of it, but I find it to be very bureaucratic and don't understand the rationale behind it.

1550

Mrs Witmer: There's not duplication. What our amendment does in this case is to ensure that the president of the board is a non-voting member of the board of directors. It ensures that the chair is appointed by the LG on the recommendation of the board of directors; that one representative of the employer member of the board of directors and one representative of the worker members of the board of directors shall serve on the board of directors in a full-time capacity; that directors will be appointed by the Lieutenant Governor in Council on the recommendation of representative groups of workers and employers; and that workers who presently are not represented by organized labour and injured workers will now have the opportunity to recommend that directors be on the board and be there as their own representatives.

We're simply following through on what has been discussed by the Premier's Labour-Management Advisory Committee, and certainly in their recommendations of March 1994 the president is included as a member of the board and we've done that. We believe there is a role for that individual in mediating an impasse between the other parties and so we have incorporated those two elements into our amendment: the fact that the president is on the board and the fact that the individual should have a role in mediating any impasse between the other parties.

Also, the presence of the president of the WCB at board of director meetings would ensure that the WCB administration would clearly understand and would undertake to accurately and effectively implement board of director decisions. We know that in the past there have been times when a decision that was made by the board of directors was not adequately communicated to the administration and we've had resulting delays and we've had confused implementation. This would prevent that from happening, if we ensure that the president of the board is a non-voting member of the board of directors.

So, as I say, we also wanted to make sure that the non-organized labour representatives would become members of the board and that injured workers who have for too long been denied an opportunity to sit on the board would have representation. As a result, these are some of the changes we are recommending to the board of directors.

The Chair: Further discussion? Seeing no further

discussion on Mr Carr's motion, all those in favour? Opposed? Defeated.

Mr Mahoney: Which number is version 2 that you handed out in the amendment package?

Clark of the Committee (Ms Tannis Manikel): Number 14.

The Chair: It says version 2 at the top, replacement motion.

We now have a government motion.

Ms Murdock: I move that subsection 56(4) of the Workers' Compensation Act, as set out in section 11 of the bill, be struck out and the following substituted:

"Absence of chair

"(4) The chair shall decide which of the directors shall act as chair in his or her absence. If the chair does not do so, the board of directors may decide which of them shall act in the chair's absence."

I think it speaks for itself.

The Chair: Further discussion? Seeing no further discussion, all those in favour of Ms Murdock's motion? Opposed? Carried.

We now have a Liberal motion.

Mr Mahoney: I move that section 56 of the Workers' Compensation Act, as set out in section 11 of the bill, be amended by adding the following subsections:

"Construction advisory committee

"(5) An advisory committee, composed of three persons representative of construction workers and three persons representative of construction employers, all to be appointed by the Lieutenant Governor in Council, shall be established.

"Same

"(6) The function of the advisory committee is to advise the board of directors on issues specific to the construction industry."

I believe there's a similar if not identical motion the Conservatives are putting forward next. We heard in the committee, members will recall, this request came from the Labourers' International Union of North America and was followed up with support from the Council of Ontario Construction Associations, the management organization within construction. They feel that construction, and obviously it is, is very unique, with regard to workers' comp, to the types of accidents, the type of health and safety requirements.

They have not felt that the board, or the government for that matter, has been listening to them with regard to suggested changes and improvements. This would put in place in legislation an advisory committee on an ongoing basis that would allow for construction to be highlighted as a very special sector within the area of compensation and health and safety. It's supported by both sides in the debate. I'm pleased to put it and would hope that we'd find all-party consent for this.

Mrs Witmer: As Mr Mahoney has indicated, this is an amendment that we have also proposed. It was a request that was made by both the employer and the employee groups. They very strongly were encouraging

us to include a construction advisory committee to the board of directors because, as has already been indicated, the construction industry is indeed unique. It actually provides a tremendous amount of jobs in this province.

During the past number of years the government has failed to recognize the uniqueness of the construction industry and unfortunately did not listen to the request. I hope they will reconsider and give support for this amendment which would allow that whole issue to be addressed. I encourage them to support the construction advisory committee.

Ms Murdock: I know that there was some discussion during the public hearings by both sides, as Mr Mahoney and Mrs Witmer have stated. During those public hearings I advised that the deputy would be meeting with both sides to discuss meetings. They have occurred since the public hearings. Just as why we didn't support the last Conservative amendment, our view is that it is a standing committee as an advisory committee.

There is a motion before the board of directors of the Workers' Compensation Board right now in putting that together and having a regular committee set up, so they recognize the uniqueness of the construction industry. That's already happened, I would say, under the way the board operates under the CAD-7, for instance, and frankly in our view it's more appropriate for the board of directors to be setting up that than legislating standing committees. So we will not be supporting it.

1600

Mr Mahoney: Just for clarification, the board of directors is not setting it up. It's being appointed by the Lieutenant Governor in Council to advise the board of directors, so we're not asking the board to do something.

Ms Murdock: I know.

Mr Mahoney: We're asking the government to do something, to establish an advisory committee to give advice. It isn't mandatory. It's not like they have some kind of power over the board, it's simply to ensure that there's a group in place, bipartite, which all of you in the government seem to think is the greatest thing in the world, a bipartite committee that will give advice and respond to issues of concern. So I just wonder—because the parliamentary assistant did say something about the board setting up the committee, and we're not asking for that to happen.

Ms Murdock: No, I realize that the motion isn't asking for that to happen, and the motion is mandatory. When you say that an advisory committee shall be established, it's legislatively mandatory. What I'm saying is that I don't believe it should be. I think the board of directors should set that up, and it is already in the process of doing that.

Mr Mahoney: Mr Chairman, I'm being a little bit argumentative, but if this were to carry, it would be mandatory to establish the committee.

Ms Murdock: Yes.

Mr Mahoney: There's nothing requiring the board to accept their advice. It's an advisory committee. They would put that information forward. If the board decided, for example—

Ms Murdock: Yes, I understand that.

Mr Mahoney: —that due to the financial accountability requirement it could not accept the advice, it wouldn't accept it. So we shouldn't confuse the mandatory aspects of it.

Ms Murdock: I'm not confusing them, Mr Mahoney. I understand perfectly that what you're asking is that this committee be legislatively mandated to be organized and put in place, and I'm saying that I don't agree with your position on legislatively doing it. I believe it's the board of directors that should be doing it, and it is.

The Chair: Further discussion? Seeing no further discussion, all those in favour of the motion by Mr Mahoney?

Mr Mahoney: Recorded vote.

The Chair: Recorded vote. On the motion by Mr Mahoney, all those opposed?

Mr Mahoney: All those in favour.

The Chair: Sorry.

Mr Mahoney: I know it's going to be defeated, but just humour me.

The Chair: All those in favour of the motion by Mr Mahoney?

Ayes

Mahoney, Witmer.

The Chair: Opposed?

Nays

Johnson (Prince Edward-Lennox-South Hastings), Klopp, Martel, Mills, Murdock (Sudbury), Wood.

The Chair: The motion is defeated.

The next one by the PCs is identical to the one previous, so same fate. PC motion next, Mrs Witmer.

Mrs Witmer: I move that section 56 of the Workers' Compensation Act, as set out in section 11 of this bill, be amended by adding the following subsections:

"Duty of chair

"(5) It shall be a duty of the chair of the board of directors to mediate between opposing directors.

"Chair is chief spokesperson

"(6) The chair shall be the chief spokesperson of the board."

This amendment is put in and it really supports the board of directors amendment that we discussed just a few minutes ago. This clarifies the fact that the chair is to act as the chief spokesperson and representative of the board, with responsibility to mediate between the opposing positions of the directors.

This has been strongly supported by a number of groups that made presentations during the course of our committee hearings. They had real concern with the existing bipartite board structure. Much of that concern results from the fact that the strictly bipartite board as we have it at the Workplace Health and Safety Agency is creating tremendous problems. It's not working as was intended, and what has happened is that the two sides have just become entrenched and there's no progress being made whatsoever.

So we've already seen a board, the Workplace Health and Safety Agency, unable to effectively deal with major issues without constant bickering and, as a result, there is concern. Unfortunately, if you take a look at that agency, the only people who have suffered are the employees, so for that reason we are proposing that the chair have the power to mediate between opposing directors and be the chief spokesperson of the board. It also is our expectation that the royal commission would further review this governance structure.

Ms Murdock: We've heard much about bipartism, and I know that the Workplace Health and Safety Agency has been used as the example of how it doesn't work, at least by the business community certainly and by the hospital association when they were here before us. I would hasten to add that the numbers of decisions that the health and safety agency has consensually decided are in the hundreds. It is the controversial ones, as everyone knows, where there are oftentimes entrenched sides and you have difficulty making it.

I'm not disputing that the chair should act as a mediator, but I'm saying that is the chair's role basically anyway. In BC where the chair does in actual practice operate as a mediator, it is not in the statute, it is not legislatively mandated. I think the function of the job requires that capability of whoever is going to be the chair, so I don't think it needs to be mandated.

The other thing is that if there is a tie at any point in time, the chair will break it. That is the role of the chair as well. So I don't see the need to put this into the legislation.

The Chair: Seeing no further discussion, all those in favour of Mrs Witmer's motion? Opposed? Defeated.

Ms Murdock: May I ask a question? After the Liberal motion on subsection 11(6), section 56, which we defeated, was there not a PC motion?

The Chair: It was identical to Mr Mahoney's.

Mrs Witmer: It was the same.

Ms Murdock: Oh, I see. All right, thank you.

The Chair: On section 11, as amended: Shall section 11, as amended, carry? Opposed? Carried.

We now have a Liberal motion. Mr Mahoney.

Mr Mahoney: I move that subsection 58(1) of the Workers' Compensation Act, as set out in section 12 of the bill, be struck out and the following substituted:

"Duties of the board of directors

"58(1) The board of directors shall act in a financially responsible and accountable manner in exercising its powers and performing its duties, as required by subsection 0.1(e).

That should read "(e)." It says "(2)" on your page; it should read (e) as in Edward.

1610

The concern here is that under the wording that exists in the bill where it says, "The board of directors shall act in a financially responsible and accountable manner in exercising its powers and performing its duties," it doesn't refer back to the purpose clause as to what its duties actually are. It's our contention that there should

be a tie-in back to the original purpose clause and the amendment.

Even though the amendment that the government has put with regard to financial responsibility, in our view, didn't go far enough because it does not regulate any potential abuse by WCAT or any other agency that could drive and does drive the cost of the board up, we at least think there should be a tie-in between subsection 58(1) and the original purpose clause.

If the government is serious about the board acting in a financially responsible and accountable manner, then I would think it would agree with that.

Mrs Witmer: Yes, we are certainly prepared to support that particular amendment. We believe it's absolutely essential that the board of directors act in a financially responsible and accountable manner.

Ms Murdock: It's quite interesting, because I remember I specifically asked the business community when they came here and were quite concerned about the purpose clause not having financial accountability and responsibility within it in the original bill. I said to them, "If you had your choice as to where it would be, where would you want it to be?" and they all said the purpose clause, without exception. So in our amendment that's where we put it.

The other point I would make, though, is that by putting it legislatively in another section of the act, I think it's redundant and it's confusing and then there are two sections of the act. I don't agree with Mr Mahoney's position that it has to refer back to the purpose, because overriding the whole act will be the purpose clause.

I know his big concern is on WCAT, which he has mentioned time and again throughout the three weeks and through the clause-by-clause, but the reality is, as we heard in a discussion on an earlier motion or amendment debate, that the WCAT is outside in terms of its decision-making. It is not within the purview of the board, and shouldn't be if it is a separate appeal mechanism.

We have now included it in the purpose clause and we don't want to add any further confusion by adding it in another section of the act, so we will not be supporting this clause.

Mr Mahoney: Am I to take from this that you'll be deleting subsection 58(1) then from the bill entirely?

Ms Murdock: Yes.

Mr Mahoney: So rather than clarifying it—because the redundancy and the confusion could be eliminated by simply tying it back into the original purpose clause. Then actually it eliminates any redundancy or confusion and makes it very, very clear.

Ms Murdock: My own view of this during—

Mr Mahoney: Let me add, by the way, we lobbied to have it put in the purpose section of the bill, and support that, but the amendment that you put in the purpose clause (a) doesn't go far enough and (b) this would eliminate any confusion with regard to the board's exercising its powers and performing its duties, because it ties right back in. When you read this section, it would then refer you back to the purpose clause, so it would be a natural tie.

Ms Murdock: No. Again I'll go back to the public hearings on this, because my own view of this, even to the injured worker groups that came before us here, was that I felt, as a lawyer I guess, that it was stronger in section 58 than having it in the purpose clause, and I said this during the committee hearings, did they not feel that it wouldn't have the same kind of effect? The business community felt that the purpose clause was where it should be and that's where they wanted it.

I guess this is a basic philosophical difference. I would never agree to an amendment, and I don't think any of my colleagues would, that if an injured worker ends up getting an injury or a disease, somewhere down in the policy or guidelines, the decision-making people on the front line are making a decision on the basis of whether or not the board could afford it if the worker was injured or had the disease. That was unacceptable. We would never agree to that—never.

The Workers' Compensation Act is there to protect workers who are injured on the job. We think the purpose clause does that and we don't need to see it in subsection 58(1) once we changed our mind and put it back into the purpose clause.

Mr Mahoney: Could I just ask for a clarification on that last point? You said that if a worker is injured, you would never allow a decision to be made based on the financial position of the board.

Ms Murdock: Yes.

Mr Mahoney: So whether or not the board had the money, the compensation should be covered. But what about an injury that's not currently covered? Would that decision to add a new category of compensable injury or illness to the compensation system—and we all know what I'm talking about—

Ms Murdock: Yes, stress on the job.

Mr Mahoney: —without taking into account financial ability of the board to pay—you've just struck the exact chord, the fear that everyone has, particularly with your government, that there will be no reference, and you've in fact admitted that notwithstanding what you supposedly put in the purpose clause, the way for you to get around the financial responsibility is to have a decision made at WCAT, where they don't have to take into account any of the financial requirements. Even if the board of directors does, WCAT can set the policy under your model and the board will simply have to write the cheques.

Ms Murdock: I remember distinctly that I was stunned, actually, when I asked one of the business groups—I think it was the Employers' Council on Workers' Compensation. No, we didn't have enough time to ask them questions. It was the chamber of commerce one after that. I asked specifically, "Are you saying that you want financial accountability and responsibility in the purpose clause and that front-line workers would make the decision?" and instead of asking, "Does the worker have the injury or the disease and was it a work-related injury?" it says, "Can the board afford to pay for this?" and they said yes. I said, "Well, we will never agree to that."

I know the one that you're concerned about is the whole stress issue, but on the industrial diseases, those that have been decided over the years—for instance, the lung diseases in miners, which took years and years to be recognized. As I said, it took years before it was recognized, and even then it was only since 1985 that the gold miners' disease has even been recognized, and yet they've gone back to pre-1945 cases.

Yes, I think that if a disease, and I don't care what it is, is recognized as being work-related, after study, not just on a whim, then there is no question that the workplace has to pay for it. I would say that has been the position of the New Democratic Party for years—well, in my lifetime—and it certainly has not changed.

Mr Mahoney: It's one of the few that hasn't changed.

Ms Murdock: Well, you may think that.

Mr Mahoney: I'm not alone in that.

The Chair: Further discussion? Seeing no further discussion on Mr Mahoney's motion, all those in favour? Opposed? Defeated.

Now I have a government motion.

Ms Murdock: I move that subsection 58(1) of the Workers' Compensation Act, as set out in section 12 of the bill, be struck out.

I think in the previous discussion we explained our position.

Mr Mahoney: Recorded vote.

The Chair: Seeing no further discussion, a recorded vote. All those in favour?

Ayes

Johnson (Prince Edward-Lennox-South Hastings)
Klopp, Martel, Mills, Murdock (Sudbury), Wood.

The Chair: Opposed?

Nays

Mahoney, Witmer.

The Chair: The motion is carried.

Mr Mahoney: While we're carrying on with this, in reference to Mrs Witmer's concern earlier about a potential motion on closure, could we ask the clerk to see if that motion has been tabled, and if it has, to get us a copy of it, and if it hasn't, to ask the Clerk at the table to give us a copy in this committee as soon as it has been tabled? I would like to know, basically, what's left on the docket. As the whip for our party I attend the House leaders' meetings and was told last week that there would be time allocation put forward this week at some point, but the question is whether or not it's going to allow any substantive time for committee of the whole when these amendments could be dealt with in committee of the whole in the Legislature for final reading and for third reading debate. Exactly how much time is going to be left? Because it's my contention that along with the closure motions on long-term care that we've seen, and there was one other before that—

1620

Mr Len Wood (Cochrane North): Municipal Act.

Mr Mahoney: —the municipal, 163, thanks—it's quite clear that the government's modus operandi is to

have all of the amendments dealt with in sort of the back rooms of this place, in committee, albeit recorded in Hansard, but not for the public other than the few who choose to be here and who even know these hearings are going on or these meetings are going on.

Frankly, if we're going to have a form of closure issued by the government and a debate on that, I would just as soon forget about this apparent waste of time where only government amendments carry in this place and opposition amendments are defeated in every instance.

Notwithstanding the fact that these amendments come from the number of public hearings that we had, in many cases with agreement on both sides, of labour and management, they're being defeated, so it's quite clear that the parliamentary assistant, in doing her job, has got marching orders, as does the committee, and that the process we're going through here is merely a charade. I could make better use of my time in the Legislature or attending to other business than sitting here going through this nonsense.

I would like to know what the government House leader's plans are as soon as we possibly can. If in fact they're going to restrict and eliminate any opportunity for committee of the whole debate in the Legislature and restrict the debate, as they did in terms of Bill 163, to what I think amounted to about half an hour in committee and an hour for third reading in the Legislature, then the government should just come clean and tell us that you're planning to shove this stuff down our throat and I can probably swallow it a little bit easier, rather than sitting here spinning my wheels on these amendments.

I would ask that we get that information as quickly as possible.

The Chair: Thank you, Mr Mahoney. In fairness to the clerk, this committee will stand recessed for 10 minutes while she contacts the Clerk at the table.

The committee recessed from 1623 to 1639.

The Chair: I'd like to call this committee back to order. It's my understanding nothing's been tabled with the Clerk of the House yet, but we will be notified if the Clerk does receive anything, which is usually, traditionally, around 5 o'clock.

We now have a PC motion.

Mrs Witmer: I'd like to move that section 58 of the Workers' Compensation Act, as set out in section 12 of the bill, be amended by adding the following subsection:

"Responsibility of the board for other bodies

"(3) The board of directors is responsible for the following:

- "1. The Industrial Disease Standards Panel.
- "2. The office of the employer adviser.
- "3. The office of the worker adviser.
- "4. The Ontario Workers' Compensation Institute.
- "5. The Workers' Compensation Appeals Tribunal.
- "6. The Workplace Health and Safety Agency."

What we are attempting to do here is to streamline the operation of the whole system of workers' compensation

in this province. We've known for years that what is happening at the present time is that money is being squandered; things are not operating as efficiently and as effectively as they could function. Money that could be directed into the hands of injured workers is being squandered and being used in wasteful ways.

We are suggesting that the board assume responsibility for all of the other agencies, and in that way costs could certainly be reduced and all decisions could be made by one central body. I think the one body that we have the most concern about is, of course, the Workplace Health and Safety Agency. As I indicated earlier, the bipartite model is not working. We know that 75% of the businesses in this province have not yet registered for training simply because there has been no attempt to cooperate with the small business community and provide the sector-appropriate training.

We see individuals who have a single agenda, who seem to be unwilling to compromise and make decisions that are in the best interests of the injured workers and the employer community and employees in this province. Our suggestion is that we need to streamline, that we need to downsize and that we need to ensure that we deal with, number one, prevention of accidents. That always has to remain our priority for everybody in this province, and certainly that can be done by making the Workplace Health and Safety Agency a department of the board and focusing exclusively on that.

We also have to take a look at providing training differently than we do today. A classroom setting, folks, is not the only way today of providing training. There are different models that can take place in the actual workplace. What we need to do is focus on prevention, and obviously if we can't—we will never be able to avoid all accidents in the province. Then we need to deal with the administration. We need to take a look at the office of the worker adviser and the employer adviser. At the present time, I can tell you employees do experience problems with the office of the worker adviser, and unfortunately they end up coming to the MPP's office. We need to provide some customer service training to some of the individuals who are presently employed in those areas because there's a great deal of stress for the injured workers when they attempt to get some answers to some of the problems that they have.

You've got the issue, then, of after the accident, if you can't prevent it, you deal with the administration. Then obviously you deal with any appeals or rehabilitation and so on. In this way we believe we could more effectively manage the operation of workers' compensation in this province.

Ms Murdock: I was going to ask what "is responsible" meant, but Mrs Witmer has explained that it would be a separate department.

Just to go through all of these, the Industrial Disease Standards Panel has its own panel and its own chair and the money is flowed through the Ministry of Labour from the WCB.

The office of the employer adviser and the worker adviser is the same, except that I would point out there that Weiler made it very clear that he felt advocates had

to be independent of the board, that that's the way they should operate, and I think the way it's set up is acceptable.

The Ontario Workers' Compensation Institute does not come under the act at all. It is done through a contract agreement with the board of directors.

With the Workers' Compensation Appeals Tribunal, as we know, already the board of directors has budget approval legislatively in the existing Workers' Compensation Act. I know there have been comments made during the public hearings about how that is just rubber-stamped, but that is the responsibility of the board of directors. If that's the way they're going to operate, and if the complaint from the business community is that they don't have any control over it, then it is their duty as board members to see to it that they look at it more closely.

In terms of the Workplace Health and Safety Agency, it doesn't even come under the Workers' Compensation Act at all. It comes under the Ontario Health and Safety Act. Money is flowed from the WCB through the Ministry of Labour, that's true, but it has its own independent board of directors, totally separate from the Workers' Compensation Board. Under the health and safety legislation they put in a requirement for legislative review after a certain period of time, and that is in progress now. The report has not been finished, so we'll know more as soon as that's done.

Finally, when you look at what the mandate of the royal commission is, it's going to be looking at all of this, and I think that's the proper place for it to be. I don't think we should be putting it in the legislation now.

Mr Mahoney: I was wondering how long it was going to take before we started to hear about the royal commission's mandate and the fact that we need not deal with changes to the Workers' Compensation Board because we have a royal commission. I just heard it for the first time from the parliamentary assistant. Of course, we believe that is going to be the refrain that will be sung by the government, by the minister and by anybody else involved in potential reform, that we can't do anything about the workers' compensation system because we've now got a royal commission.

Having said that, I just want to make a couple of comments about some of this. Actually, the intent of this motion is good, but the detail of it doesn't work, because frankly we would close the health and safety agency and create a department for the delivery of health and safety training under the Workers' Compensation Board.

Ms Murdock: You set that up under Bill 162, I'd like to remind you.

Mr Mahoney: We set up the bill but we didn't put the people in charge of it. You did that.

Ms Murdock: Bill 162 came under a Liberal government.

Mr Mahoney: You did that. It was Bill 208. It was Bill 208, if the parliamentary assistant wants to be corrected.

Ms Murdock: You're right. Thank you.

Mr Mahoney: We put the legislation in place, and believed very much—

Ms Murdock: And you asked for this to be a health and safety agency.

Mr Mahoney: —in health and safety training. We didn't put Paul Forder in charge of it. He's one of yours, and frankly that's where a lot of the problem is occurring.

Ms Murdock: Excuse me, but the business community is not silent here.

The Chair: Order. Mr Mahoney has the floor.

Mr Mahoney: We would clearly change that. On the appeals tribunal, though, it's interesting to think about WCAT being under the control of the board. It's sort of the reverse of WCAT making decisions that drive board policy. Either one of those situations is not acceptable to me. WCAT should be and must be, in my view, completely independent, should be made quasi-judicial, should be set up under its own legislation separate from the board, and should be making decisions that are of a judicial nature and not have the chair, as I tried to get through at our last meeting, sitting on the board in some kind of an advisory capacity, and should certainly not be answerable to the board of directors, but should be, rather, independent in making its decisions of review.

The employer adviser and the worker adviser actually are two of the areas that I think may indeed turn out to be part of the solution to some of the problems. They're extremely busy. My initial reaction before we did our outreach tour was that I couldn't imagine a system that required offices of advisers, that this thing had just gone wild and out of control. But frankly, in looking at it and studying it, it seems to me that these two offices do yeoman service and probably need to have more resources put in their hands to try to expedite the process that they go through, and I think they can probably be part of the solution to this problem and should be somewhat independent as well.

One thing maybe the parliamentary assistant, who's stopped interrupting me, thankfully, could explain for the record, or staff could explain for the record, is the role of the compensation institute. This is such an interesting animal that I think it would be helpful to have it on the record as to what they do and what their budget consists of and what they are there for. Could anyone on the staff answer that?

1650

Ms Murdock: I remember attending a meeting about them. They're paid by the board of directors. It's a contractual arrangement. But in truth I don't know exactly what it is that they do—

Mr Mahoney: Neither do I.

Ms Murdock: —other than provide information about different policy issues in different policy areas. They set up a list of things that they want to talk about, the board discusses it with them and they work that out and send in a report quarterly, if my memory serves me correctly. But I'll let April speak to it.

Ms April Eastman: Recently, most of their research has been looking at soft-tissue injuries and how to improve return to work.

Mr Mahoney: And how to what?

Ms Eastman: Improve return to work and to reduce average duration on benefits; they've been doing extensive research into that.

Mr Mahoney: I wonder if at some time in the future maybe the research staff or somebody could get something for committee members. I did not mean in any way to reflect on the knowledge that you may have about this, because I'm in the dark about them as well. I've heard bits and pieces about them. I suspect many of the members of the Legislature are not familiar either with the work they do or the necessity of the work they do.

This might be an area where we could actually do something constructive. If indeed their work is helpful in terms of the functioning of the board, I think we should know that; if it's not, we should know that too. Either your government or perhaps a subsequent government would want to review that agency.

Ms Murdock: It's not an agency.

Mr Mahoney: It's not established as an agency. What is it, a camel?

Ms Murdock: No. It's an institute of study and education that makes a contractual agreement with the board of directors on, I presume, an annual basis.

Mr Mahoney: Funded by the board?

Ms Murdock: Funded by the board. The board makes that decision as to whether it wants their services every year. I know that I met with the chair of that institute within the first year after we were elected, but I have not met with him since. But I can get the information. In fact, we can get you copies of their quarterly reports that they send to the board; those are public. I will find out what other information there is and make sure that both critics get it.

Mr Mahoney: You might want to share it with government members. I suspect all members of the Legislature would be interested in this and probably have a lower knowledge level than even we have on matters of this type. It's probably not appropriate to put a motion; I guess I'm putting it as a request, that information on this institute be put together and distributed to all members of the Legislature.

Ms Murdock: Okay. That's not a problem. I'd be happy to do it. My ministry staff are always able and willing.

The Chair: Further discussion on the motion by Mrs Witmer? Seeing no further discussion, all those in favour of the motion by Mrs Witmer? Opposed? Defeated.

Do we have another PC motion?

Mrs Witmer: I move that section 59 of the Workers' Compensation Act, as set out in section 12 of the bill, be struck out and the following substituted:

"President

"59. The board of directors shall appoint a president of the board who shall manage the affairs of the board in accordance with the policies set forth by the board of directors and in a financially responsible and accountable manner."

What this is intended to do is to add the same obligation of financial accountability on the administration

which the president would head. Presently Bill 165 imposes the obligation of financial accountability on the board of directors but not on the president. This would correct that situation.

Ms Murdock: I think that in earlier discussion on another clause this whole issue, in my view, has been addressed.

The Chair: Further discussion? Seeing no further discussion, all those in favour of the motion by Mrs Witmer? Opposed? Defeated.

Shall section 12, as amended, carry? Carried.

No amendments to section 13. Shall section 13 carry? Carried.

On section 14, we have a government amendment.

Ms Murdock: I move that section 14 of the bill be struck out and the following substituted:

"14(1) Subsection 63(2) of the act is amended by renumbering clause (a) as clause (a.1) and adding the following clause:

"(a) prescribing classes for the purposes of clause (b) of the definition of 'training agency' in subsection 3.1(1).

"(2) Subsection 63(2) of the act is amended by adding the following clauses:

"(h.1) prescribing information for the purposes of subsection 51(2) about the ability of a worker to return to work and about any restrictions affecting the worker's ability to perform work on his or her return;

"(h.2) prescribing requirements, for the purposes of clause 51(1)(b), that must be satisfied before a health professional is required to provide a report under subsection 51(2);".

This is in regard to the training amendment that was introduced with unanimous consent, and it's the consequential regulatory authority that needs to be in place in order to utilize that amendment.

The Chair: Further discussion? Seeing no further discussion, all those in favour of the motion by Ms Murdock? Opposed? Carried.

Mr Mahoney: I'm now in receipt of a motion put by the government House leader to shut down this committee and to shut down debate on Bill 165. It calls for a final day of this committee to sit on Monday, the 28th. "All proposed amendments must be filed with the clerk of the committee prior to 12 noon," on that day, and at 4 pm, which would then mean half an hour more of committee work, "those amendments which have not yet been moved shall be deemed to have been moved" etc, even to the point where it instructs you, Mr Chairman, that you "may allow only one 20-minute waiting period pursuant to standing order 128(a)," which I assume is a request for a caucus adjournment. So the government's not only hammering the opposition, it's hammering the committee Chair in this case by restricting your abilities.

Then it goes on to say that as of 4 o'clock, you'll put every motion, every vote will be taken on that day and we'll just sit here until it's all done. Then on the first available day following that, it will be reported to the House. Failing that, it will be determined to have been reported to the House, and then they'll have a two-and-a-

half-hour debate on third reading.

Mrs Witmer: That's it?

Mr Mahoney: That's it, which doesn't even allow for the usual 90-minute critics' debate for each of the opposition parties, to mention the fact that some government members may want to make some comments. So the hammer has fallen upon the opposition, upon the committee, upon you as Chair, upon injured workers and upon everybody in this province with this motion that has been tabled.

This is an utter waste of time, and I move adjournment of this committee.

The Chair: On the motion to adjourn, discussion? Seeing no discussion, all those in favour of the motion to adjourn? Opposed? Defeated.

Mr Mahoney: You guys have a nice afternoon.

The Chair: On section 14, shall section 14, as amended, carry? Carried.

Ms Murdock: Might I ask a procedural question? If this committee continues to sit this afternoon and the opposition members are not present, and opposition amendments obviously would be brought forward, what is the procedure in terms of that?

The Chair: As we go through the book, if there is nobody here to move a Liberal amendment, then it wouldn't be moved and it wouldn't be dealt with. We have a PC critic here. She could move her motion still, and we would proceed on through the amendments.

Ms Murdock: A further question then: Does that mean that we go back to those amendments on Monday when we come back, or if they're not moved in order, they're not moved at all?

The Chair: If the section has been moved and carried, we cannot go back to it unless there's unanimous consent.

Ms Murdock: Could I ask for a five-minute recess?

The Chair: This committee stands recessed for five minutes.

The committee recessed from 1702 to 1707.

The Chair: I call this committee back to order.

Mr Gordon Mills (Durham East): I think that we are elected and we are here to do the business of the people of the province of Ontario, and if the Liberal critic chooses and the Liberal members choose to leave this clause-by-clause examination of the bill, they are not doing the service that they were elected to do, and likewise if the Conservative critic, as I understand it, is also going to leave this committee. So I would suggest that we are here to serve the people of Ontario, and the government members are here to proceed with the clause-by-clause examination of this bill. I want that on the record.

Ms Murdock: I would like to point out—and I know that the comments were made and that he isn't here to defend himself; mind you, I don't think he needs much defending—that the time allocation motion that Mr Mahoney is so offended by is a standard time allocation motion; the identical one was used for the long-term-care time allocation motion last Thursday. So there isn't

anything different. What was done in terms of the debate in the House for the two and a half hours was that the minister spoke for 10 minutes and the opposition were given all the rest of the time except for five minutes at the end. I would imagine the same kind of agreement will be made on this, so that the opposition sit there with well over two hours to state their views and opinions.

Certainly, given the length of time that this has been discussed, I see no reason at all for the opposition to be saying that they haven't had time or are not being given the opportunity to discuss this with different constituency groups. So I think we should be proceeding. It's seven minutes after five. We don't shut down till six, and we might as well go ahead.

Mrs Witmer: I think I need to get something on the record. I am the PC critic for the Labour portfolio. I would just like to share with you a little bit of information. This is now the 19th time that the NDP government, in four years in office, has selected to behave in this way and deal with bills through closure. During the entire time that the Conservatives were in power, it only happened about five times, and about five times with the Liberals as well. So it's obvious that the NDP does not wish to listen to the people who have made presentations.

Ms Murdock: Well, I don't know if any of my colleagues want to respond, but I definitely want to respond to that. When we first won the government in 1990—this is a history lesson here—the leader of the Conservative Party stood up in the House and read every lake, river and stream in this province alphabetically, in terms of an introduction of a bill, in order to delay any work being done in the House, when it costs a quarter of a million dollars a week to keep this place in operation—totally offensive. Then we had no choice, because we weren't getting any work done—we're here sent down by our constituents to be here to do work and they, the opposition, both parties, were not allowing us to do that—and yes, we changed the rules in the House to allow time allocation; you're darned right.

1710

The rules prior to our change were not as easily introduced and that's the reason why the Liberal government and the previous Tory governments did not bring as many time allocation motions in, plus, when you're sitting with 42 years of power in this province, and most of them majority governments, excuse me, but you don't need too many time allocation motions. We're sitting here now wanting to get things done. Nineteen times—if we have to do it 1,000 times, then that's what we'll do to get something done in this province.

Mr Mills: I'd like to echo some of the things Ms Murdock has said. The Tories and the Liberal Party have refused to let us govern the province of Ontario that we were elected to do. They have forced this upon us. I remember only too well sitting, I think, in the House for about three weeks while the Conservative Party read out, albeit in slow motion, every name of every creek and every river in the province of Ontario. Then they followed this despicable tactic up by doing the same thing with the names of villages, hamlets and all that and, I might add, in slow motion and at a cost of \$220,000 a

day to the taxpayers of Ontario. Then they have the audacity to sit here and criticize this government for closure. Normally we have to resort to closure because their despicable tactics in this House are out there for all the public to see, and all the public knows very well that every delaying tactic has cost the taxpayers—you, I and the people I represent—\$220,000 a day. That is disgraceful and despicable.

Mrs Witmer: I do take offence with the comments that have just been made. I do not believe, in the course of debate on the bill in front of us, that there have been any obstructionist tactics on our part whatsoever. In fact, if I recall correctly, when we were sitting in committee there were numerous breaks and recesses and I had the impression that at times the government was slowing down the process.

Certainly, we have been most cooperative and I think you need to realize, Mr Mills, it is very frustrating to listen for three weeks to people in this province make suggestions as to how you can better balance the Workers' Compensation Act amendments in order that they respond to the needs of injured workers and employees and employers and then see amendments which are brought in which do not reflect what has been said. We sit here on a daily basis as rubber stamps. No one listens. There is a feeling of frustration, I can tell you.

The Chair: Very—

Mr Ted Arnott (Wellington): No, I can speak, Mr Chairman. I'm a member of the Legislature.

The Chair: Yes, go ahead.

Mr Arnott: There's another relevant point that should be brought into the context of this discussion. The House is sitting for 20 days, remember, this fall.

Mr Mills: Oh, give me a break.

Mr Arnott: Oh, give me a break. We were scheduled to go back September 26, according to the calendar. The Premier when he was Leader of the Opposition insisted upon the creation of a calendar. We didn't respect the calendar this fall; we came back on Hallowe'en, October 31 with 20 days to deal with legislation. Had the House come back as per the normal schedule, there's a good chance we wouldn't be doing this.

So to blame the opposition for the closure motion is absolute nonsense, and I would like to give Mr Mills the opportunity to withdraw some of the really inflammatory rhetoric that he employed in his remarks earlier.

Mr Mills: I meant every word.

The Chair: In fairness, we are on Bill 165, we're on the clause-by-clause submissions. To get on with this political debate would be wasting the committee's time, being as the committee has decided to proceed. So we will proceed.

On section 15 we have a PC motion.

Mrs Witmer: I move that subsection 65(2) of the Workers' Compensation Act, as set out in subsection 15(1) of the bill, be amended by striking out "Seven members" in the first line and substituting "Seven voting members".

The bill presently does not take into consideration the fact that all members of the board need to be voting members, and business can now be passed with non-voting members present and, as a result, you could be conducting business using the presence of the WCAT chair, a non-voting member, to meet your quorum. This amendment would ensure that the quorum would consist of voting members.

Ms Murdock: This is sort of interesting because when I read this Conservative amendment, I went back to the bill and in order to have any decision by the board, no non-voting member obviously would be part of that decision, right?

Mrs Witmer: But they can conduct business.

Ms Murdock: You would still have to have a majority of the seven, and say one of them was non-voting, hypothetically here, then you'd still have to have a majority of the six in order to have any decision made by the board. So when you read 15(2), the only change is that you've got the word "voting". That's basically the only change. A decision of the majority is a decision of the board of directors. They have to be voting in order to have a decision. It's assumed that you have to be voting within the language that's used within that section.

Mrs Witmer: But it doesn't explicitly say that and at the present time, you could have seven members discussing the business, conducting the business and they would not all necessarily be voting members. This actually was an issue that was raised by the Municipal WCB Users Group, by M. C. Ward and Associates and the Employers' Advocacy Council.

Ms Murdock: I remember that, but my point is, when you look at the composition of the board and who votes, the only non-voting member is the chair of the appeals tribunal, who can't vote on anything anyway.

Mrs Witmer: Right.

Ms Murdock: But can be considered one of the members.

Mrs Witmer: And he can be used to meet the quorum.

Ms Murdock: To meet the quorum requirement, but cannot be a decision-maker in any of the votes that are called.

Mrs Witmer: We want to ensure that the quorum would include only the voting members, that the individual would not be counted in the quorum.

Ms Murdock: I guess what I'm asking is, why?

Mrs Witmer: Because we believe it's absolutely essential that those individuals who are going to be involved in making the decisions be individuals who are entitled to vote and we do not believe it's appropriate for a WCAT chair, who is a non-voting member, to be counted in for the purposes of meeting the quorum.

Ms Murdock: But this goes back then to your request earlier to have—I think it might have been the Liberal one—the WCAT chair not even be at the board meetings, period. I think that was a Liberal amendment. I would say that sometimes—not that it happens all the time—it happens that some people arrive late and you can't start

the meeting until you get them all there. Given that decisions can't be made by the non-voting member, I don't see that there should be a problem.

Mrs Witmer: If an individual is going to be making decisions and casting a vote, obviously it's extremely important that before any discussion or debate occur, they all be there for the start of the discussion rather than running in at the last minute and not have had the benefit of the discussion, and understand fully the reasons why they're taking a position.

1720

Mr Arnott: Like I just did.

Mrs Witmer: Yes, like this person just did.

The Chair: Further discussion? Seeing no further discussion, all those in favour of the motion by Mrs Witmer? Opposed? Defeated.

Mrs Witmer: I think it needs to be corrected for the record that Mr Mills had indicated that I was leaving, the PC Labour advocate, and I'm here as well as my colleague Ted Arnott, even though the Liberals are not here, so I think the record needs to stand corrected.

Mr Mills: Mr Chairman, perhaps I could just add that the reason I said that was because I think Ms Murdock asked Mrs Witmer if she was going to leave and she indicated that she was. When I spoke she was standing up against the wall with her bundle under her arm. I presumed she was going to stick to her word and leave when she said she would leave. She didn't. My mistake.

The Chair: Thank you very much.

Ms Murdock: We know it wasn't a ghost that spoke to that previous amendment.

The Chair: We have a government motion next.

Ms Murdock: I move that subsection 15(2) be struck out and the following substituted:

(2) Clause 65(3)(h) of the act is amended by adding at the end "and avoiding any duplication of compensation."

Again, it's self-explanatory but there was some consternation during the public hearings by all sides about whether or not the compensation was Workers' Compensation compensation or Canada pension compensation, and whether or not a person was receiving compensation for the same injury and that kind of thing, and I think this clarifies it.

The Chair: Further discussion? Seeing no further discussion, all those in favour of the motion by Ms Murdock? Opposed? Carried.

Ms Murdock: I move that section 15 of the bill be amended by adding the following subsection:

(2.1) Clause 65(3)(i) of the act is amended by adding after "employment" in the last line "and avoiding any duplication of compensation."

The Chair: Discussion?

Ms Murdock: Same thing.

The Chair: Further discussion? Seeing no further discussion, all those in favour of the motion by Ms Murdock? Opposed? Carried.

We now come to a PC motion.

Mrs Witmer: I move that subsection 65(3.1) and

(3.2) of the Workers' compensation Act, as set out in subsection 15(3) of the bill, be struck out and the following substituted:

"Duties

"(3.1) The Board shall monitor the developments in understanding the relationship between work, injury, occupational disease and workers' compensation,

"(a) so that generally accepted advances in health sciences and related disciplines are reflected in benefits, services, programs and policies in a financially responsible and accountable manner; and

"(b) in order to improve the efficiency and effectiveness of the workers' compensation system and make it more financially responsible and accountable.

"Evaluation of proposed changes

"(3.2) The board shall evaluate the consequences of any proposed change in benefits, services, programs and policies to ensure that the purposes of this act are achieved in a financially responsible and accountable manner."

The reason for this amendment is because, in the absence of entrenching the concept of financial accountability and responsibility in the purpose clause, we are proposing that at this point the act be amended to ensure that the board monitors generally accepted advances in health sciences and related disciplines, and evaluate the consequences of any proposed change in benefits, services, programs and policies with the concept of financial responsibility in mind.

Ms Murdock: Basically, we think the purpose clause does that already, so we won't be supporting this.

The Chair: Further discussion?

Mrs Witmer: This is quick now.

The Chair: Seeing none, all those in favour of the motion by Ms Witmer? Opposed? Defeated.

We now have a government motion.

Ms Murdock: I move that subsections 65(3.1) and (3.2) of the Workers' Compensation Act, as set out in subsection 15(3) of the bill, be amended by striking out "board" in the first lines of subsections 65(3.1) and (3.2) and substituting, in both places, "board of directors".

The reason we did that was because there was some discussion as to whether the responsibility was the board of directors or the corporate body of the board and we wanted to make it clear.

The Chair: Further discussion? Seeing none, all those in favour of the motion by Ms Murdock? Opposed? Carried.

Shall section 15, as amended, carry? Carried.

On section 16: PC motion.

Mrs Witmer: I move that section 65.1 of the Workers' Compensation Act, as set out in section 16 of the bill, be amended by adding the following subsection:

"Effect of repeal

"(5) A policy direction issued under this section ceases to have any effect upon the repeal of this section."

This amendment is to clarify that any policy direction issued by the government may be reviewed, may be

amended or revoked by the board of directors upon repeal of this section.

Ms Murdock: Can I just ask some clarification from the critic? May be reviewed, may be repealed—doesn't the board do that anyway?

Mrs Witmer: Yes. Basically what we would like to do is totally strike out section 16 of the bill.

Ms Murdock: Oh, okay. I should have known.

Mrs Witmer: We feel this section compromises the principle of independent administration of the provisions of the act and giving the minister power for even a one-year period to issue policy directions to the board goes against the concept of self-government of the WCB.

Ms Murdock: Right. Okay.

Mrs Witmer: That's why this has been introduced.

Ms Murdock: There's been a lot of discussion on the whole issue of why the government would want to have control or policy guidance over the board for the year following the bill being enacted.

I don't know how many times I've said this, but I'll say it one more time for the record. The whole point of this, as was discovered in British Columbia when they changed their system, was that British Columbia discovered that for bipartisanship to work, the board has to have some time together in order to determine what its protocols are going to be and how they're going to operate in situations when there are controversy or confrontation or other kinds of similar issues.

There will be matters where consensus can be reached quite easily, but there will always be issues where they won't be and those protocols have to be in place, so BC found, and the protocols set up by the board members themselves to determine how to operate in situations where there is going to be controversy and you don't want stalemates. The board still has to operate. In the meantime, while they are working out their protocols—and, as I said, in BC it took them a year for that to occur—somebody has to do it and that's why this provision is in. As soon as the board has those protocols set up and in place, then this will have no meaning at all.

1730

Mrs Witmer: I can tell you that the PC Party of Ontario does not even wish to contemplate the possibility of the provincial cabinet acting as the board of directors for the WCB, and obviously that's something that could happen if this section remains unchanged.

The Chair: Further discussion. Seeing no further discussion, all those in favour of the motion by Ms Witmer? Opposed? Defeated.

Shall section 16 carry? Carried.

On section 17, we have a PC motion.

Mrs Witmer: I move that subsection 65.2(2) of the Workers' Compensation Act, as set out in section 17 of the bill, be amended by striking out the first two lines and substituting the following:

"(2) The memorandum of understanding must address, in accordance with the purposes of this act and in a financially responsible and accountable manner, the following matters:"

Again, the substance of this amendment is to ensure that the memorandum of understanding addresses the following matters in accordance with the purposes of this act in, again, a financially responsible and accountable manner.

What we are introducing here once again, as we have attempted to do throughout the course of the amendments we've introduced, is the need for financial responsibility and accountability. In this case we are injecting that into the memorandum of understanding.

Ms Murdock: This is sort of interesting, given the previous amendment. The way I'm reading this, the memorandum of understanding, I think under section 65.2 under the bill, would certainly continue the accountability and the reporting requirements of the board to the minister. But by putting this in, I think what it would be doing is basically giving a lot of power to the minister in the reporting mechanisms. As I said, we believe that the purpose clause already does that and that in terms of negotiating a memorandum of understanding they can put whatever they want in it. Obviously, if the purpose clause says that it's supposed to be done in a financially responsible and accountable manner, now, once this is passed, they will have to do it that way. It doesn't need to be stated legislatively again.

Mrs Witmer: Obviously we differ.

Ms Murdock: Yes.

Mrs Witmer: We can't quite understand why the government is so reluctant to incorporate and ensure that there is a framework for financial accountability and responsibility throughout the document, and that's what we want to ensure happens. I think we all want to make sure there is adequate money available in the future to help the injured workers, so we need to be cognizant of how money is spent and how decisions are made.

Ms Murdock: I'm not disputing that except, why would you bother having a board of directors then? That's what their function is. They're supposed to be doing that. That's their job. If they're supposed to be acting in a financially accountable and responsible manner, then any memorandum of understanding that they would agree on or go into should be on that basis and their decision-making is done in a financially accountable and responsible manner.

Now, having said that, then legislatively you can put the requirement for a memorandum of understanding in, but you don't put the content of the memorandum of understanding in the legislation. They do that contractually themselves. That's the other reason we wouldn't agree.

Mr Arnott: The parliamentary assistant indicates that she has every confidence that all memorandums of understanding will be undertaken with a degree of fiscal accountability, right? That's what you're saying, essentially.

Ms Murdock: The memorandum of understanding is done between the board of directors and the Ministry of Labour. There's going to be a requirement on the board members to act in a financially accountable and responsible manner. The purpose clause is passed and there will be a responsibility on the board members and therefore,

I would hope, given what the duties and functions of a board member are, that they would not be going into an agreement where it wouldn't be done in a financially accountable and responsible manner.

Mr Arnott: I guess we agree in terms of what needs to be done. We just want some additional insurance that it will be done, and that's what we're asking. If you agree with it in principle, I fail to understand why it couldn't be reflected in the legislation.

Ms Murdock: But you're saying that instead of saying it once in the legislation, to put it in there as many times as you can. I'm just saying that in legislation you don't need to do that. The requirement, the duty is there legislatively already in the purpose clause and there does not have to be a hit over the skull with a sledgehammer in order for it to be understood that this is their responsibility.

Mr Arnott: I would hope not.

Ms Murdock: I would hope not.

Mr Arnott: I think it would be nice to have this insurance.

Ms Murdock: Legislatively, I don't agree.

The Chair: Further discussion? Seeing no further discussion, all those in favour of the motion by Ms Witmer? Opposed? Defeated.

We now have a PC motion.

Mrs Witmer: I would like to withdraw that motion.

The Chair: Withdraw? No need to. We'll just call it not moved.

Shall section 17 carry? Carried.

On section 18, we have a government motion.

Ms Murdock: I move that section 18 of the bill be struck out and the following substituted:

"18. Section 66 of the act, as amended by the Statutes of Ontario, 1993, chapter 38, section 71, is repealed."

The Chair: Discussion? No discussion. Shall the motion by Ms Murdock carry? Carried.

Shall section 18, as amended, carry? Carried.

Shall section 19 carry? Carried.

Shall section 20 carry? Carried.

On section 21, we have a government motion.

Ms Murdock: I move that subsection 72.1(1) of the Workers' Compensation Act, as set out in section 21 of the bill, be amended by adding the following paragraphs:

"3.1 If a worker or an employer objects to a decision of the board concerning measures or expenditures under section 52.

"6.1 If a worker or an employer objects to a decision of the board under subsection 103(4.1) as to whether the employer has failed to cooperate in vocational rehabilitation services or programs."

Section 21 of the bill establishes that the Workers' Compensation Board may provide mediation services to resolve disputes and stipulates the occasions when the board must provide those. The proposed amendments add to the list of circumstances where a mediation must be provided. I guess basically what it does is it extends the

mediation services to situations where potential conflicts may arise.

1740

The Chair: Further discussion? Seeing no further discussion on the motion by Ms Murdock, all those in favour? Opposed? Carried.

We now have a PC motion.

Mrs Witmer: I move that subsection 72.1(2) of the Workers' Compensation Act, as set out in section 21 of the bill, be struck out.

We'd like to again totally eliminate section 21 of the bill. Basically, since we know it's not possible to do so, this shows our intention to vote against section 21. We believe the emphasis on mediation and return-to-work issues detracts from the board's central function as an adjudicative body. What we see happening is that mediation will be imposed on parties when there may not even be entitlement to workers' compensation. This was certainly never, ever a part of the PLMAC accord and it will be certainly difficult and impractical to administer. Quite a few of the presenters who appeared before us had real concerns about this particular section.

Ms Murdock: I think we've discussed it at great length during the public hearings, even, as to what our position on this is and the savings that would result in to employers by having someone get back on the job, the return-to-work and the rehab provisions, if that can be done through mediation with no lost time. If there's no lost time, then it also means that the premiums to the employer will be that much less in the following year when the assessment is made, so it's to the employers' benefit that this section is in. I must admit I just don't understand some of the employers' concerns regarding this, but anyway, we'll be opposing it.

The Chair: Further discussion? On the motion by Ms Witmer, all those in favour? Opposed? Defeated.

Ms Murdock: Gordon, you have the report.

Mr Mills: Well, it's getting repetitious.

Ms Murdock: Should've brought my report in.

The Chair: We now have a government motion.

Ms Murdock: I move that subsections 72.1(3) and (4) of the Workers' Compensation Act, as set out in section 21 of the bill, be struck out and the following substituted:

"Time limit

"(3) Unless the mediation is successful the board shall finally determine the matter within 60 days after the board receives the objection or application or within such longer period as the board may permit."

The Chair: Discussion?

Ms Murdock: I think it's self-evident.

The Chair: No further discussion? All those in favour of the motion by Ms Murdock? Opposed? Carried.

Ms Murdock: I move that subsection 72.1(5) of the Workers' Compensation Act, as set out in section 21 of the bill, be amended by adding at the end "unless the parties to the application or proceeding consent."

It clarifies that the person who mediates a dispute may, only if the parties consent, participate in other proceed-

ings or the hearing related to the matter being mediated. So it's only with consent.

The Chair: Further discussion? All those in favour of the motion by Ms Murdock? Opposed? Carried.

Shall section 21, as amended, carry? All those in favour? Opposed? Carried.

On section 22, we have a government motion.

Ms Murdock: I move that subsection 76(3) of the act, as set out in subsection 22(1) of the bill, be struck out and the following substituted:

"Liability of directors, officers, employees, etc"

"(3) No action or other proceeding for damages lies against a member of the board of the directors, officer or employee of the board or a person engaged by the board to conduct an examination, test or inquiry or authorized to perform any function for an act or omission done or omitted by him or her in good faith in the execution or intended execution of any power or duty under this act or the regulations."

"Board liability"

"(4) Subsection (1) does not relieve the board of any liability to which it would otherwise be subject."

I'm going to let Sherry Cohen, legal counsel for the Ministry of Labour, explain this.

Ms Sherry Cohen: Currently, under the act the crown is liable for the board when the board or any of its employees or the board of directors is sued for negligence. Given that the board has an arm's-length relationship with government, it has a separate accident fund. The Ministry of the Attorney General did not consider it appropriate for the crown to be paying for actions against the board out of the consolidated revenue fund. What the bill does is remove crown liability and codifies any immunities the board would otherwise have at law when parties sue it.

There was a concern about the wording that perhaps the wording of the bill was giving the board a broader immunity than the courts would give. What the amendment does is simply clarify that they have whatever immunity the common law confers upon them when plaintiffs sue the board. What this means under the transitional provisions is that in any actions against the board or any actions for which notice has been given under the Proceedings Against the Crown Act, parties can no longer sue the crown. They would have to sue the board and the board would have to pay the damages.

The Chair: Further discussion? Seeing no further discussion on the motion by Ms Murdock, all those in favour? Opposed? Carried.

Shall section 22, as amended, carry? Carried.

On section 23, we have a government motion.

Ms Murdock: I move that the English version of subsection 88(3) of the Workers' Compensation Act, as set out in subsection 23(2) of the bill, be amended by adding "committed" after "tort" in the fourth line.

It's a drafting problem that is being corrected. The French version has to be changed to more closely match the English language which reads, "execution of a power or duty under this act—"

The Chair: Excuse me, Ms Murdock. You did them out of order.

Ms Murdock: I did?

The Chair: Okay. We'll proceed with this one first.

Ms Murdock: Yes, you're right. I should have subsection (2) before subsection (3). Apologies.

The Chair: On the motion.

Ms Murdock: Which motion? Subsection (2)?

The Chair: The first one, the one you read.

Ms Murdock: The one I read is subsection (3). All right.

1750

The Chair: Straightforward? All those in favour of the motion by Ms Murdock? Opposed? Carried.

Ms Murdock, a government motion?

Ms Murdock: I move that the French version of subsection 88(2) of the Workers' Compensation Act, as set out in subsection 23(2) of the bill, be amended by inserting "par la personne" after "de bonne foi" in the fifth line and by striking out "lui confère ou lui impose" in the last line and substituting "confère ou impose."

It's a translation error.

The Chair: All those in favour of the motion by Ms Murdock? Opposed? Carried.

Shall section 23, as amended, carry? Carried.

On section 24, we have a government amendment. Ms Murdock.

Ms Murdock: I move that subsection 95(1) of the Workers' Compensation Act, as set out in subsection 24(1) of the bill, be struck out and the following substituted:

"Occupational Disease Panel

"(1) The Industrial Disease Standards Panel is continued under the name Occupational Disease Panel in English and Comité des maladies professionnelles in French."

It is self-evident, and it was at their request, I would add.

The Chair: Seeing no further discussion, all those in favour of the motion by Ms Murdock? Opposed? Carried.

A further government motion.

Ms Murdock: I move that section 24 of the bill be amended by adding the following subsection:

"(2.1) Subsection 95(7) of the act is amended by striking out 'subsections 76(3) and (4)' in the first line and substituting 'subsections 88(2) and (3).'"

It's to correct a drafting error.

The Chair: Further discussion? Seeing none, all those in favour of the motion by Ms Murdock? Opposed? Carried.

Shall section 24, as amended, carry? Carried.

Shall section 25 carry? Carried.

Shall section 26 carry? Carried.

Section 27: We have a government motion. Ms Murdock.

Ms Murdock: I move that subsection 103(4.1) of the

Workers' Compensation Act, as set out in section 27 of the bill, be struck out and the following substituted:

"Same

"(4.1) If an employer fails to cooperate in vocational rehabilitation services or programs provided under section 53, the board may add to the amount of any contribution to the accident fund for which the employer is liable an additional amount determined in accordance with subsection (4.2). The board may assess and levy the increased assessment upon the employer.

"Same

"(4.2) The additional amount referred to in subsection (4.1) is an amount equal to a percentage the board considers appropriate of the benefits to which the worker was entitled during the period in which the employer failed to cooperate in vocational rehabilitation services and programs."

The Workers' Compensation Board is able to determine any increase in assessment in accordance with the percentage just for the period of non-cooperation—I think that's explained fairly clearly—and the employer's penalty for non-cooperation is defined now with this amendment in the same way the worker's penalty for non-cooperation has been defined all along under section 37. We're introducing the penalty for the employer for the first time in this bill.

Mrs Witmer: We will be voting against section 27 of the bill because we believe the WCB program already ensures a high standard of employer accountability that is presently delivered through a variety of vehicles, including experience rating. As individual claim costs increase, so does an employer's financial exposure; thus a direct accountability is presently established. Additionally, an employer is subject to stringent obligations to re-employ disabled workers.

What this section is suggesting is that there would be undefined fines for undefined crimes, which is an inappropriate and an unprecedented power. These fines, we believe, are unneeded and what they serve to do is to subject business to multiple financial exposures for a single infraction.

I think we need to remember that the WCB was established as a wage replacement benefit program. It continues as such today. If that is indeed the case, it is inappropriate for it to become in effect an employment agency, and that's what this section is suggesting.

The Chair: Response? Seeing no further discussion, all those in favour of the motion by Ms Murdock? Opposed? Carried.

Shall section 27, as amended, carry? Carried.

Section 28: government motion, Ms Murdock.

Ms Murdock: I move that section 103.1(2) of the Workers' Compensation Act, as set out in section 28 of the bill, be struck out and the following substituted:

"Determination of refund or surcharge

"(2) The amount of a refund or surcharge under a program shall be determined by the board based on the work injury frequency of an employer, the accident cost of the employer or both.

"Variation

"(3) The amount of a refund or surcharge may be varied by the board upon consideration of,

"(a) The health and safety practices and other programs of the employer to reduce injuries and occupational diseases;

"(b) vocational rehabilitation practices and programs of the employer;

"(c) practices and programs of the employer to assist workers to return to work; or

"(d) such other matters as the board considers appropriate."

On this, there was a lot of consternation about accident-injury frequency and accident cost. We have addressed those concerns in this amendment. The other thing is that the wording for subsection (3) is exactly as what was in the PLMAC agreement, and it's discretionary.

Mrs Witmer: At this point, I'd like to move for unanimous consent to sit beyond 6 of the clock since we are so close to completion of the debate on Bill 165.

Mr Mills: On that motion, I'm afraid that I can't sit because I'm going to the Confederation dinner at the Constellation, where the three leaders are debating those issues, and I want to be there.

The Chair: We do not have unanimous consent. With the adjournment of the House, this committee stands adjourned until either Wednesday or Monday, depending on the statement on time allocation. I believe it's Monday, though.

The committee adjourned at 1800.

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- *Mills, Gordon (Durham East/-Est ND)
- *Murdock, Sharon (Sudbury ND)
 - Offer, Steven (Mississauga North/-Nord L)
 - Turnbull, David (York Mills PC)
 - Waters, Daniel (Muskoka-Georgian Bay ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/ Prince Edward-Lennox-Hastings-Sud ND)
for Mr Waters
Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Conway
Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan

Also taking part / Autres participants et participantes:

Arnott, Ted (Wellington PC)
Ministry of Labour:

- Cohen, Sherry, legal counsel
- Eastman, April, policy adviser, workers' compensation unit

Clerk / Greffière: Manikel, Tannis

Staff / Personnel: Hopkins, Laura, legislative counsel

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Third Session, 35th Parliament

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Monday 28 November 1994

Journal des débats (Hansard)

Lundi 28 novembre 1994

Standing committee on
resources development

Comité permanent du
développement des ressources

Workers' Compensation and
Occupational Health and Safety
Amendment Act, 1994

Loi de 1994 modifiant la Loi
sur les accidents du travail et la Loi
sur la santé et la sécurité au travail

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Monday 28 November 1994

Lundi 28 novembre 1994

*The committee met at 1548 in committee room 1.*WORKERS' COMPENSATION AND
OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT LA LOI
SUR LES ACCIDENTS DU TRAVAIL
ET LA LOI SUR LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 165, An Act to amend the Workers' Compensation Act and the Occupational Health and Safety Act / Projet de loi 165, Loi modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail.

The Chair (Mr Mike Cooper): We're continuing our clause-by-clause analysis of Bill 165. Just a reminder to the committee members that under the motion that was passed in the House, at 4 pm we'll be starting to vote without debate on all motions, and all motions will be deemed to have been moved. We left off on a government motion by Ms Murdock.

Mr Steven W. Mahoney (Mississauga West): Just on a point of clarification, since we have a number of people in the committee room today, it should just be clear that we're operating under a time allocation motion passed in the Legislature which fundamentally says that we can debate issues on this bill for about the next 12 minutes and then every question will be put.

Just to avoid people misunderstanding that the government has brought in closure, time allocation, whatever you want to call it, this debate is fundamentally over and will move into the Legislature for one two-and-a-half-hour debate, which I believe is scheduled to take place one week from today.

If members of the public, many of whom are injured workers, are here today to hear some kind of debate on substantive issues around reform of workers' compensation, I just want them to know that the NDP government has shut down this committee and shut down the process.

The Chair: Debate on the motion by Ms Murdock?

Ms Sharon Murdock (Sudbury): I would point out that we've been in clause-by-clause for one full week and three other weeks, so we're shutting it down, using the terminology, but we're shutting it down because we have been at this long enough.

Section 28 of the bill:

I move that subsection 103.1(2) of the Workers' Compensation Act—

The Chair: It's already been moved, Ms Murdock.

Ms Murdock: Oh, it has been?

The Chair: Yes.

Ms Murdock: If we can go to the two prior motions, one by the Liberals and one by the Conservatives, we explained in detail how that would work and why we were doing it in this section. But for the benefit of the people in the audience, it's intended to closely parallel the agreement regarding developing a template of best practices for the board's experience rating programs.

In its experience rating programs, of which we heard much during the public hearings, the Workers' Compensation Board uses the employer's cost record and accident frequency to determine an employer's performance in relation to the rest of its rate group. Employers with good accident records are issued rebates under these programs and the poor performers are issued surcharges. Therefore, we feel that the experience rating programs are results-driven.

In order to augment the current experience rating programs by providing incentives for good health and safety, vocational rehab and return-to-work practices, the government has introduced an amendment which will allow the WCB to use those criteria to adjust an employer's refund or surcharge position, and the wording from that is used exactly out of the PLMAC agreement, as was discussed by labour and management.

Mr Gary Carr (Oakville South): If you could jog my memory on the difference between the amendments, the difference between the proposals, between what the Liberals—

Ms Murdock: Yours was to not have any surcharge at all. That was the concern.

Mr Carr: I was thinking more of the Liberals'; I knew ours. What was the difference there?

Ms Murdock: I have to go back. The Liberal motion was:

"surcharges are imposed only on employers whose accident record for the previous year exceeds the industry average for that year...; and

"refunds are available only to employers whose accident records for the previous year is below the industry average...."

Mr Carr: Wasn't it true that during some of the hearings a lot of people came forward and said they wanted to keep the experience rating? What was your recollection during the hearings?

Ms Murdock: Wanted to? I'm sorry; I didn't hear you.

Mr Carr: To keep the experience rating and that the

merit rating programs be left alone. Isn't that what we heard in a lot of the hearings?

Ms Murdock: Yes, we certainly did. They were concerned particularly with the preamble of subsection 103.1(2), "Termination of refund or surcharge," in our amendment. They wanted it very clearly stated about work injury frequency and accident cost, and we did that. That was one of the other things. We're not agreeing with the presenters who came before us that employers who do not have good health and safety practices etc should not be surcharged. Actually, they weren't arguing about the surcharge. What they were saying to us during the public hearings was that this was very important in terms of rebate, and we have not removed that. We have now given four areas which can be looked at in determining how to determine that surcharge or that rebate.

Mr Carr: But this gives you more power to eliminate refunds or increase surcharges, doesn't it, the way it's written?

Ms Murdock: Well, no.

Mr Carr: Isn't that what the intent is?

Ms Murdock: They had the power to do it before. There was a surcharge, but there wasn't any kind of a method. There was nothing in the existing legislation that gave you parameters to judge by, so what we're doing in subsection (3) of this is giving the areas that employers and labour and management agreed to were the areas the Workers' Compensation Board should be looking at in a workplace to determine whether or not anything is being done in terms of determining the surcharge, if there is a surcharge. If their accident rate is down and their health and safety practices are good, then they will probably continue getting a rebate.

Mr Carr: This gets into the big debate we had before. You say you can already do it, so why do you want this amendment? I know we went around that one for a long time, which I don't want to revisit and go through, but if you already have existing power to do it, then why this amendment?

Ms Murdock: What they were coming before us and telling us during the public hearings was that the amendment in Bill 165 did not specifically use that wording from the PLMAC agreement. Upon the recommendation of the people who came before the hearings, we have delineated that as well as listening to them in regard to looking at injury frequency and accident cost, which were the two areas that they were very concerned about. They wanted it clarified. So this government amendment to our bill is clarifying that.

Mr Carr: In your mind, does this give more of an incentive to return-to-work opportunities?

Ms Murdock: No, I would say it gives more of an incentive for employers who are not looking at the NEER program to get involved in it and start working on their health and safety practices. That's what I would say.

Mr Carr: The way it's written here, if they don't, they'll face increased surcharges.

Ms Murdock: Depending on what they're doing under (a), (b), (c) and (d).

Mr Carr: Right now you can increase the surcharges?

You say you can or you can't?

Ms Murdock: I don't know.

Mr Carr: Legally, do you know?

Mr Mitchell Toker: The current experience rating program is operated on the basis of accident costs and injury frequency. Currently, surcharges or rebates are generated on the experience a particular employer would have with respect to those two criteria. What we've done here in subsection (2) is confirm that accident costs and injury frequency remain the main criteria to be used in experience rating and in subsection (3) identify the additional criteria that will be used to adjust the surcharges either up or down based on practices in the area of health and safety, return to work and vocational rehabilitation.

Mr Mahoney: I guess the frustration with this whole section and with this amendment particularly leads from the sort of artificial attempts—if you'll notice, through the amendment they refer to "practices and programs" and "safety practices and other programs." They refer to "rehabilitation practices and programs" and "practices and programs of the employer to assist workers to return to work."

Rather than actually focusing on the results and what is being done, it appears that there's a great attempt by this government to have Workplace Health and Safety Agency models all over the place, and as long as the workplace has got all these so-called wonderful practices and programs in place, it doesn't much matter whether or not they're getting injured workers back to work, whether or not they're reducing accidents. You're not measuring it in terms of actually seeing injured workers back to work—modified work, the same work that they were doing before, alternative work, that type of thing.

These are clear-cut things that can be measured, rather than, do we have a practice or do we have a program, are we running educational seminars in classrooms or whatever? Not to say that those are not good things to do; they are. It would be the hope of anybody that if you educated management and workers together, you would improve the level of safety in the workplace. But the real focus here should be on reducing accidents and returning injured workers back into the workplace so that they can get their jobs back and retain their dignity and get on with their lives.

I don't see how this amendment does anything other than add to what I frankly think is a typical philosophical bent of the New Democrats to put in more "practices and programs." It's quite clear to me when you see the function. We hear the people involved with the agency bragging of the success of the health and safety agency all the time, and you would assume—because Bill 208 was Liberal legislation, we believe in the legislation—that implementing that bill and putting in place programs in the workplace would lead to a reduction in accidents and a better return to work, and therefore your off-balance wouldn't be as great as it is in this particular program. Instead, you're bringing in these magical, mystical solutions of "practices and programs."

The one that scares the hell out of me is (d), "such

other matters as the board considers appropriate." What in the world does that mean? We're going to invent some kind of new bipartite board or whatever if the Workers' Compensation Board decides or the government of the day, be it yours, ours or a future government, whoever, decides that it wants to set up some nice little perk for some of its friends to get involved in health and safety training: whatever they want to do, whatever they consider appropriate.

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When you combine that with the fact that the minister in this legislation gets complete control of the ship for one year, the potential for politicization of the workers' compensation system is right here, right in this amendment. It is absolutely clear, it is dangerous, and there's no need to be putting this kind of situation into place in the province of Ontario. We'll be voting strongly against this.

We're quite prepared to say that maybe our solution, the amendment we put forward dealing with averages, isn't the easiest and isn't the easiest to measure, but why can't we deal with substantive, constructive, factual statistics that show whether or not there's been a reduction in accidents and an improvement in early return-to-work programs put in place, and actually not just the programs but the results? This has got to be result-oriented.

I'm afraid that your government, Madam Parliamentary Assistant, is so bent on establishing philosophical criteria for how to run the Workers' Compensation Board that you can't see the forest for the trees. Injured workers want to return to work. Good employers want them to return to work, because it's cost-effective for them to return to work. So why not measure this program, and if somebody is not successful in returning injured workers to work, they should be hammered. Absolutely no question about it. Any company that refuses to put in place early return to work should be dealt with in the stiffest possible way.

The Chair: Thank you, Mr Mahoney.

Mr Mahoney: But as is also appropriate, there should be benefits to a company that's prepared to cooperate with the injured workers and get them back to work. You're totally negating that with this amendment.

The Chair: Thank you. It now being 4 o'clock—

Mr Mahoney: Once again I'm being shut off because it's 4 o'clock, ladies and gentlemen. They're shutting this joint down right now. You're watching democracy in action right here.

The Chair: Thank you, Mr Mahoney. It now being 4 o'clock, we will proceed with all the votes necessary to complete this bill.

On the government motion by Ms Murdock, all those in favour? Opposed? Carried.

On the Liberal motion deemed to be moved, all those in favour? Opposed? Defeated.

Shall section 28, as amended, carry? All those in favour? Opposed? Carried.

Shall section 29 carry? All those in favour? Opposed? Carried.

Shall section 30 carry? All those in favour? Opposed? Carried.

On government motion number 68, shall the motion carry? All those in favour? Opposed? Carried.

Shall section 31, as amended, carry? All those in favour? Opposed? Carried.

On section 32, PC motion 69, all those in favour? Opposed? Defeated.

PC motion number 70: All those in favour?

Mr Carr: On a point of order, Mr Chair: Can any of these be recorded?

The Chair: Yes, you can call for a recorded vote.

Mr Carr: A recorded vote on this.

The Chair: All those in favour of PC motion number 70?

Mr Mahoney: I move for a 20-minute recess.

The Chair: This committee stands recessed for 20 minutes.

The committee recessed from 1606 to 1627.

The Chair: I call this committee back to order.

Mr Carr has called for a recorded vote on PC motion 70. All those in favour of the motion?

Ayes

Carr.

The Chair: Opposed?

Nays

Fawcett, Hansen, Klopp, Mahoney, Martel, Mills, Murdock (Sudbury), Offer, Waters.

The Chair: The motion is defeated.

Government motion, replacement 71. All those in favour? Opposed? Carried.

Shall section 32, as amended, carry? All those in favour? Opposed? Carried.

The members are being called to the House for a vote.

Mr Mahoney: We could at least deal with our motion that strikes out the 4% cap in the Friedland, which is the next motion that I think some of the folks who are here would probably like to see us vote on.

Mr Steven Offer (Mississauga North): We should have a recorded vote on that.

Mr Mahoney: A recorded vote on that one, yes.

The Chair: On the Liberal motion number 72—

Mr Mahoney: To eliminate the cap.

The Chair: All those in favour? Recorded vote.

Ayes

Carr, Fawcett, Mahoney, Offer.

Interjections.

The Chair: Order, please. Opposed?

Nays

Hansen, Klopp, Martel, Mills, Murdock (Sudbury), Waters.

The Chair: The motion is defeated.

This committee stands recessed until immediately following the vote in the House.

The committee recessed from 1630 to 1644.

The Chair: I would like to call this committee back to order. Continuing on section 33, we have a government motion, number 73. All those in favour? Opposed? Defeated—oh, carried. Sorry.

Mr Mahoney: I wasn't going to say anything.

The Chair: My apologies. That motion was carried.

Mr Mahoney: Hansard shows it was defeated.

Interjection: It shows where your mind is.

The Chair: The Chair did correct himself.

Okay, on the next government motion, 74.

Mr Mahoney: Mr Chairman, could you take the vote that you called again?

The Chair: Called previous?

Mr Offer: Yes, you've got to do it again.

Mr Paul Klopp (Huron): No, you can't.

Mr Mahoney: Why not?

The Chair: Okay, just to make it clear, just to note, Ms Fawcett was not here.

Mr Offer: Are you challenging the Chair?

The Chair: Ms Fawcett was not in the room.

Mr Mahoney: Just to be safe, have a recorded vote.

Mr Derek Fletcher (Guelph): Mr Chair, I call a 10-minute recess.

Mr Mahoney: Recorded vote, Mr Chair.

Mr Fletcher: On a point of order.

The Chair: We cannot entertain a point of order.

Mr Offer: It's your stupid government's time allocation motion.

Mr Fletcher: But you can't vote on something you've already voted on.

The Chair: The Chair did make a mistake. It was carried five to four.

Mr Fletcher: Right, and that was cleared up; it was a slip of the tongue.

The Chair: I apologize for that. On the next government motion, 74.

Mr Mahoney: Recorded vote.

The Chair: A recorded vote. All those in favour?

Ayes

Fletcher, Klopp, Martel, Murdock (Sudbury), Waters.

The Chair: Opposed?

Nays

Carr, Fawcett, Jordan, Mahoney, Offer.

Mr Mahoney: It's a tied vote, Mr Chairman.

The Chair: As the Chair, I have to maintain the status quo, so I'll have to vote against the government motion and go with the original bill.

Mr Mahoney: So it's defeated.

The Chair: So it's defeated.

Mr Fletcher: Can we have another vote on that? I think you made a mistake, a slip of the tongue.

The Chair: We are on subsection 33(2). That motion is defeated.

Shall section 33, as amended, carry? All those in favour? Down. Opposed? Carried.

Mr Mahoney: Is it necessary, after they've voted, that you tell them to put their hands down?

The Chair: It makes it easier, just so there's no confusion.

Shall section 34 carry? Carried.

Shall section 35 carry? Carried.

Shall section 36 carry? Carried.

Back to section 7.

Mr Mahoney: Is this the replacement motion?

The Chair: Government motion number 14, moved by Ms Murdock and stood down on September 29. All those in favour? Opposed? The motion is defeated.

We have a government replacement motion, version number 2. All those in favour? Opposed? Carried.

Shall section 7, as amended, carry? Carried.

Shall the title of the bill carry? Carried.

Shall the bill, as amended, carry?

Mr Offer: Recorded vote.

The Chair: All those in favour?

Ayes

Fletcher, Klopp, Martel, Mills, Murdock (Sudbury), Waters.

The Chair: All those opposed?

Nays

Carr, Fawcett, Jordan, Mahoney, Offer.

The Chair: Carried.

Shall I report the bill? Agreed.

Seeing no further business before this committee, just a reminder that there will be a subcommittee meeting immediately following, but this committee stands adjourned to the call of the Chair.

The committee adjourned at 1651.

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Workers' Compensation and Occupational Health and Safety Amendment Act, 1994, Bill 165.

Mr Mackenzie / Loi de 1994 modifiant la Loi sur les accidents du travail et la Loi sur la santé et la sécurité au travail, projet de loi 165. M. Mackenzie R-1473

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*Murdock, Sharon (Sudbury ND)

*Offer, Steven (Mississauga North/-Nord L)

Turnbull, David (York Mills PC)

*Waters, Daniel (Muskoka-Georgian Bay ND)

*In attendance / présents

Substitutions present / Membres remplaçants présents:

Carr, Gary (Oakville South/-Sud PC) for Mr Turnbull

Fletcher, Derek (Guelph ND) for Mr Wood

Hansen, Ron (Lincoln ND) for Mr Wood

Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Conway

Also taking part / Autres participants et participantes:

Ministry of Labour:

Murdock, Sharon, parliamentary assistant to the minister

Toker, Mitchell, manager, workers' compensation unit

Clerk / Greffière: Manikel, Tannis

Staff / Personnel: Hopkins, Laura, legislative counsel

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Troisième session, 35^e législature

Official Report of Debates (Hansard)

Wednesday 30 November 1994

Journal des débats (Hansard)

Mercredi 30 novembre 1994

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

Subcommittee report

Rapport de sous-comité

Chair: Mike Cooper
Clerk: Tannis Manikel

Président : Mike Cooper
Greffière : Tannis Manikel



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Wednesday 30 November 1994

Mercredi 30 novembre 1994

The committee met at 1602 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr Mike Cooper): The report from the subcommittee:

"Your subcommittee met on Monday, November 28, 1994, to discuss the committee's agenda. Your subcommittee makes the following recommendations:

"That Bill 176, An Act to amend the Highway Traffic Act with respect to Slow Moving Vehicle Signs be considered by the committee on Monday, December 5, and Wednesday, December 7, 1994;

"That the following groups be invited to make presentations: Ministry of Transportation; Farm Safety Association; Ontario Hydro; Mennonite Central Committee;

"That presentations be limited to 20 minutes.

Could we have somebody move the subcommittee report? Ms Murdock. Discussion?

Mr Paul Klopp (Huron): I agree with this. We normally meet from 4 to 6 on these days?

The Chair: At 3:30 or following routine proceedings.

Mr Klopp: Is it out of turn if we accidentally get the bill done on the first day? This doesn't make us drag it out for two days if we don't have to?

The Chair: It's possible we could finish it in one day.

Mr Klopp: Even though we've passed this now?

The Chair: Even though; it's just to allow the time.

Mr Klopp: I'm happy with the four groups. I think they cover all the rural interests. The Farm Safety Association, just for the record, is on things like the Ontario Federation of Agriculture, the National Farmers' Union and the Christian Farmers Federation of Ontario. I think they will be coming as an umbrella group and, knowing these groups, I don't think anybody is going to be frustrated that they're the only ones here. This is fair.

Ms Sharon Murdock (Sudbury): Just a question here: The 20 minutes would involve their presentation and questions by the committee?

The Chair: That's correct.

Ms Murdock: In the subcommittee's discussion, was there any particular reason to limit them to 20 minutes rather than, say, 30 minutes? I'm just asking.

The Chair: In the discussions with the subcommittee and with Mr Hayes, the person presenting the bill, the discussion was that it wouldn't take them more than about 10 minutes to present their view.

Mrs Joan M. Fawcett (Northumberland): Could I get clarification? Were the OFA and the Christian Farmers and those groups asked, or did they not want to make presentations?

The Chair: They basically come under the Farm Safety Association.

Mrs Fawcett: I see. They'll be covered under that and they're happy with that?

The Chair: Yes.

Mrs Fawcett: As far as you know?

The Chair: As far as we know.

Mr Klopp: I can't speak exactly for them, but in my past history of the organizations and following through, the Farm Safety Association is a member of the OFA. They give reports every year and this has been one of the things that they've been talking about every year, that some day we'll get it passed, so I can't imagine—there's never been anybody who stood up at the meeting and said, "I don't like that idea."

The Chair: Seeing no further discussion, all those in favour of the subcommittee report? Carried.

This committee stands adjourned until Monday.

The committee adjourned at 1605.

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Wednesday 30 November 1994

Subcommittee report R-1477

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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*Waters, Daniel (Muskoka-Georgian Bay ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Cunningham, Dianne (London North/-Nord PC) for Mr Jordan

Clerk / Greffière: Manikel, Tannis

Staff / Personnel: Richmond, Jerry, research officer, Legislative Research Service

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**Official Report
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Monday 5 December 1994

**Journal
des débats
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Lundi 5 décembre 1994

**Standing committee on
resources development**



**Comité permanent du
développement des ressources**

**Highway Traffic Amendment Act
(Slow Moving Vehicle Signs), 1994**

**Loi de 1994 modifiant le code
de la route (panneau de véhicule lent)**

Chair: Mike Cooper
Clerk: Tannis Manikel

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STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Monday 5 December 1994

Lundi 5 décembre 1994

*The committee met at 1550 in committee room 1.*HIGHWAY TRAFFIC AMENDMENT ACT
(SLOW MOVING VEHICLE SIGNS), 1994LOI DE 1994 MODIFIANT LE CODE DE LA ROUTE
(PANNEAU DE VÉHICULE LENT)

Consideration of Bill 176, An Act to amend the Highway Traffic Act with respect to Slow Moving Vehicle Signs / Projet de loi 176, Loi modifiant le Code de la route en ce qui concerne le panneau de véhicule lent.

The Chair (Mr Mike Cooper): I'd like to call this meeting of the standing committee on resources development to order. Today we'll be doing the committee's consideration on Bill 176.

Mr Pat Hayes (Essex-Kent): Thank you, Mr Chair and committee members. I'd also like to thank the opposition for allowing me to say a few words and for bringing this bill forward.

I'm very pleased to be here today because this is a bill that we feel certain will improve safety on the highway and the Highway Traffic Act, and of course also will improve the government's road safety agenda. We would ask the committee also to support the amendment to the bill.

This has been an ongoing concern for many years and I'd just like to say that all farm organizations—the Farm Safety Association, the Ontario Federation of Agriculture, the Women's Institute and just pretty well every organization involved in agriculture—along with people who are involved from the Ministry of Transportation, and I think that's very, very important. Hopefully, these slow-moving-vehicle signs will reduce accidents, especially in our rural communities. It'll also allow people in the Ministry of Transportation or the police forces to enforce the rules and these signs will be used only on slow-moving vehicles and not other areas where they really don't mean anything.

I'm very pleased to be here and, without taking too much time, I thank everybody for their continued support, from all three parties here, and push forward with this bill. Would you want me to read that amendment now, or wait until we get into that section of the bill?

The Chair: We'll do that when we get to the clause-by-clause analysis.

MINISTRY OF TRANSPORTATION

The Chair: I'd like to call forward our first presenters, from the Ministry of Transportation. Would you please come forward? Good afternoon and welcome to the committee. Just a reminder that you'll be allowed up to 20 minutes for your presentation. The committee

would appreciate it if you'd leave a bit of time at the end for questions and comments from each of the caucuses.

Mr Paul Levine: I'm Paul Levine. I'm manager of the road user policy office of the Ministry of Transportation. Accompanying me this afternoon is Catherine Brooks, a safety policy officer with the road user policy office.

I'd like to thank the committee for inviting the Ministry of Transportation to present our thoughts on Bill 176. As I'm sure most of the committee members are aware, Ontario has a goal of making our roads the safest in North America. This bill, along with other initiatives such as graduated licensing and demerit points for non-use of seatbelts, will help us meet our road safety goal.

Just how does the slow-moving-vehicle sign contribute to road safety? As with any highway-related sign, it is vital that drivers have immediate recognition and understanding of the intended message to enable them to take appropriate action. A slow-moving-vehicle sign has been designed for the purpose of identifying vehicles which are travelling well below the posted speed limit. It is of uniform design and appearance throughout North America. When motorists see an SMV sign, they should slow down to avoid a collision and only pass the slow-moving vehicle when it is safe to do so.

Currently, the sign is being misused on mailboxes and as driveway markers along the highways. Such misuse breeds disrespect and erodes the sign's effectiveness. Also, the use of the sign for these purposes poses a real hazard as mailboxes could be mistaken for farm vehicles and farm vehicles mistaken for mailboxes, particularly at night or in severely inclement weather. It is for these reasons the ministry supports the proposed bill to regulate the use of the slow-moving-vehicle sign.

The ministry advocates the prohibition of the use of these signs anywhere on or near a highway except on vehicles for which they are intended. In addition to prohibiting the misuse of the sign, the ministry agrees with extending the use of the slow-moving-vehicle sign beyond farm machines to all vehicles not capable of sustaining a designated speed in normal operation. The extension would make Ontario's laws consistent with nine other Canadian provinces and territories. Each of these jurisdictions has legislation which specifies a maximum sustainable speed of 40 kilometres per hour, below which vehicles must use the slow-moving-vehicle sign.

The ministry does, however, have some concerns. The bill, as it now stands, gives authority to exempt horse-drawn vehicles driven by persons whose religious convictions or beliefs prohibit the display of these devices. The ministry supports this exemption. It was prompted by

segments of the Amish and Mennonite communities who consider slow-moving-vehicle signs to be ornamentation and contrary to their religious beliefs. But for safety reasons, the ministry would like the authority to be able to prescribe an alternative means of improving the visibility of exempted vehicles.

Prior to prescribing any alternative, the ministry would work with the affected parties to find a device which does not contradict their religious beliefs. Without an alternative, the exemption will provide an excuse for individuals who are in non-compliance, and enforcement will be virtually impossible. A motion to amend the bill will be brought forward during clause-by-clause consideration.

The second amendment we would like is to include a standard clause providing regulation-making authority in respect of slow-moving vehicles in the event that any issue may arise which has not yet come to our attention.

In closing, I'd like to reiterate that the ministry advocates prohibiting the slow-moving-vehicle signs anywhere on or near a highway except on vehicles for which they were intended. We support exemptions on a limited basis but do desire the authority to prescribe alternatives.

On behalf of the Ministry of Transportation, I'd like to thank Mr Pat Hayes for bringing forward this bill intended to save lives by making our roads safer.

The Chair: Thank you. Questions?

Mr Hans Daigeler (Nepean): I didn't quite understand that regarding the religious exemption. What did you say you were going to propose? I haven't read the amendment yet or seen the amendment.

Mr Levine: We propose to identify some form of enhancement for the visibility of the vehicles that is acceptable to the two groups that we are aware of, segments of the Amish and Mennonite communities. Some of their membership refuses to use the standard slow-moving-vehicle sign, the triangular orange sign, because they believe it to be ornamentation. Early meetings that we've had with these groups have resulted in their identifying to us that they would not object to something along the lines of white reflective tape being required on the vehicles. This is on their horse-drawn carriages.

To this point we haven't drawn up any firm proposal for what shape or dimensions that alternative might be. We would propose that if the amendment goes through, prior to proclamation of the bill, we would meet with the two groups and ensure we have an acceptable method of identifying and increasing the visibility of these vehicles, especially for night-time and bad weather use.

Mr Daigeler: What kind of amendment—I guess I do have to ask it—are you proposing? Certainly I support the idea of sitting down with them, but putting an amendment so the Ministry of Transportation can sit down with religious groups—

Mr Levine: No, it's an amendment that provides us with regulatory authority to prescribe an alternative device to the standard orange triangular device.

Mr Daigeler: I see. You want authority to possibly designate a different sign.

Mr Levine: That's correct, although it wouldn't be a different sign but rather potentially minimum dimensions of reflective tape.

1600

Mr Daigeler: That's a different sign by any stretch of the imagination. You're asking for the minister to have authority to make regulations that—I saw, which is rather interesting, this exchange of correspondence between Ontario Hydro and the deputy minister. That matter has been settled, I guess. At least I take it from the deputy minister's answer that he feels that this law, if it is passed the way it is written, would not apply to these signs that are on top of hydro towers.

Mr Levine: I think the response from the deputy would not suggest that we would want to provide an exemption from the legislation for Ontario Hydro. However, it would be left up to the discretion of Ontario Hydro whether those signs would be visible from the highway. The way the legislation is written, we can only prohibit the use of the sign where it's visible from the highway. There could be situations where even if the sign is 50 feet up on a transmission tower, depending on the topography of the ground and the geometry of the road, the headlights of a car could pick up those signs. It would be difficult for us to say out of hand that they never would.

Mr Daigeler: Has there been any further response from Hydro, or was that it then?

Mr Levine: I don't think we were anticipating any further response.

Mr Daigeler: So they seem to be satisfied with the answer?

Mr Levine: We haven't had a response since September.

Mr Noble Villeneuve (S-D-G & East Grenville): Thank you for coming back and supporting slow-moving-vehicle signs. Slow-moving-vehicle signs I think are very, very important. We had a very unfortunate accident not very long ago where a horseback rider was killed riding a horse along a right of way. I don't know how you look after that. I know in Mennonite country I still would hesitate to have anything taken away from what has traditionally been the slow-moving-vehicle sign which is on slow-moving vehicles.

Question: Let's say I have a grain box, or two grain boxes, set on a truck that can go more than 40 kilometres an hour. I took it off wagons and I put it on the back of a truck. It has a slow-moving-vehicle sign on the back of it. Is this illegal? Would this be illegal under this type of legislation?

Mr Levine: If the truck were now to head out on a highway and travel at a speed greater than 40 kilometres per hour, the signs should be removed.

Mr Villeneuve: Most of these signs on our grain boxes are stuck on there kind of permanently, so we'd pretty well have to rip them off.

Mr Hayes: Use brackets.

Mr Villeneuve: The ones I have on mine are stuck on there.

Mr Ron Hansen (Lincoln): They were just hammered on.

Mr Villeneuve: No, no. They're stickers. It's a triangular—well, I'm sure you know of what I speak. This would be illegal, I gather.

Mr Levine: Yes, it would be illegal if the vehicle were travelling more than 40 kilometres an hour along the road.

Mr Villeneuve: Because this would be a flatbed truck and some of them have two and three grain boxes on them going to the elevator. A lot of them have the sticker on the back of the grain box, which is a traditional thing. So I guess right now it would have to be covered up.

Mr Levine: Yes. I think the easiest solution would be to cover the sign.

Mr Villeneuve: We are coming up with some wagons that trail pickups pretty well, but not very often will they be going over 40 kilometres per hour. So a conventional farm wagon or two farm wagons behind a farm pickup would be legal with the slow-moving-vehicle sign?

Mr Levine: Yes, as long as they—

Mr Villeneuve: They're trailing.

Mr Levine: —they trailed and they were going less than 40 kilometres.

Mr Villeneuve: I'm not telling you they'll never be over 40. They could be, but chances are they won't.

Mr Levine: If the normal operation trailering these two wagons would be below 40 kilometres per hour, then they should have the sign. It would certainly enhance the safety of the operation.

Mr Villeneuve: That's been traditional, because if they're behind a farm tractor, they won't be going over 40 kilometres an hour; if they're behind a farm pickup, they could, but chances are they wouldn't. So that would be left to a police officer and likely not be illegal.

Mr Levine: That's correct.

Mr Leo Jordan (Lanark-Renfrew): I'd like to go back to this Ontario Hydro issue for a minute. They're asking you here if their structures could be exempted from the legislation or if subsection (4) could be modified so that a sign being affixed to a fixed object at an elevation of 50 feet above the highway would not be caught by that subsection. I don't see where that's been dealt with.

Mr Levine: We haven't dealt with it in the bill because we don't feel that we can accommodate the request. Although the sign may be 50 feet up on a transmission tower, it depends where that transmission tower is in relation to a roadway. The transmission tower could be down in a valley and the road up on a hill and a vehicle's lights could pick up that slow-moving-vehicle sign on the tower, and especially in bad weather, we wouldn't want a motor-vehicle operator picking up a reflective sign and thinking that this was a vehicle ahead of him and driving off into the ditch, which is quite possible.

Mr Villeneuve: That makes sense. They're single-use things; that's what you want to make of them.

Mr Levine: Yes.

Mr Jordan: So what are you going to do? I'm driving down the highway and Ontario Hydro has a—these signs, by the way, are there for helicopters patrolling the lines.

Mr Hansen: Keep your eyes on the road, Leo.

Mr Jordan: That's right. That sign indicates to me, the pilot, that there's danger ahead and the sign is usually 500 metres ahead of the object that I want to take care of. Oftentimes it's a case of where one line has crossed over another one, and when I'm patrolling with a helicopter, I won't see that crossover so that triangular sign warns to be careful to go up, to raise my elevation.

Mr Levine: In the extreme, my suggestion to Ontario Hydro would be to alter the sign that it has chosen to use in this situation.

In something less than the extreme, a lot of these signs may not be anywhere near a highway. If they're not visible from the highway, then we have no concern, but certainly I think that this particular sign has been known as a slow-moving-vehicle sign. It's not only in use in Ontario, but it is a uniform traffic control device throughout North America and it has a single-purpose that we're trying to enhance here by prohibiting its use.

Specifically, we've mentioned to try and get them off mailboxes and as driveways markers, which we often see in rural Ontario. We just recognized that this increases the potential hazard of having people drive off the road, thinking that they are attached to a moving vehicle.

1610

Mr Hansen: I think Mr Daigeler sat on stable funding, if I'm not mistaken, that gave the exemption to the Mennonite community. I notice in Toronto here that the Metro mounted division has a strip around the back of the horse, and it's like a fluorescent white to give people an indication of the horse. Especially a dark horse on a street, it's pretty hard to tell. I know the buggies are a problem at night. It's so black out there, especially in the country.

The other thing is, I've sort of got a question: You see backhoes out on the road now, and they don't normally travel over 40 kilometres. We've been talking about farm vehicles. There are farm vehicles that are backhoes and front-end loaders which farmers have, but the construction industry also.

The other point is, what about a motorized wheelchair? Would that be a slow-moving vehicle? There are some places where there's no sidewalks and the only place to travel is on the road. Would they be required, or would they go into the exemption the same as the religious—

Mr Levine: We're still working with a definition that should apply to a motorized wheelchair, or a personal mobility device, as we've been calling them lately. We haven't yet determined that they should be considered to be vehicles. In fact, our leaning, although it hasn't been reflected in legislation yet, is that they are extensions of the individual's body and should be treated more as a pedestrian, although I do concur with your thoughts that if there are no sidewalks and they are out on the road, it certainly wouldn't hurt, and I don't think anyone would ever be charged for having a slow-moving-vehicle sign

on the back which would increase visibility of that kind of device.

Mr Hansen: It should give them the opportunity to be able to put them on for the safety of the occupant, but not only that, the safety of the person driving the particular vehicle.

Maybe I was going to bring it up a little bit later, but the enforcement of this: Now we've got maybe thousands of signs on mailboxes. What would be a level of fine or a warning? What type of regulation is going to come in? Is it going to be if it's on a highway the OPP and municipally it would be the municipal police would say that the person remove it immediately, while he's there, or would he have a time period of seven days to remove it without a fine and if it wasn't removed a fine would be assessed?

Mr Levine: Certainly when the legislation is proclaimed, our proposal is that we would have a number of communications avenues to try and get the information out to the public, including news releases and information coming through the OFA and the FSA. We would certainly hope that we're able to encourage police officers not to lay charges immediately but rather give warnings, again, initially. We are not introducing any specific penalty section, so it would fall back to the general penalty, which has a set fine of \$90. Again, with some advance warning and the opportunity to get some communications out there, we would hope that people would see the merit of removing those signs from the mailboxes into their driveways.

Mr Hansen: I imagine that if my colleague Noble and myself we put it in our flyers from our office, if anybody wants them, take them down, we would willingly take them down, because we're always short of the triangles out there.

The Chair: It seems we've generated a bit of interest, and there is more discussion to come from the Ministry of Transportation. You'll be here for the rest of the afternoon?

Interjection.

The Chair: We'll call them back after our other presenters.

Mr Daigeler: Are we finished with the time allocated?

The Chair: For this group, yes. So we'll call them back after our other two presenters, before we go into the clause-by-clause, and then we can just go around and get all the technical questions that arise and they can be asked then.

FARM SAFETY ASSOCIATION

The Chair: I'd like to call forward our next presenters, from the Farm Safety Association. Will you please come forward. Good afternoon and welcome to the committee.

Mr Joseph Andrews: Good afternoon and thank you. My name is Joseph Andrews. I'm farm safety consultant and the resource person on our Highway Traffic Act committee for the Farm Safety Association. With me today is Jim Gibb, past president of our association and at the current time chairman of our Highway Traffic Act

committee. There's a handout of material that's going out to you there.

This is not a recent phenomenon with the Farm Safety Association. I've been personally working to this end for 18 years. We see the slow-moving-vehicle sign as being a key component in a safety awareness program that we would see develop from having this sign have some meaning within the law.

The Farm Safety Association over the years has developed recommendations based on information from the farm community, and noted in your handout material there is a list of the groups that participated in that developing of those recommendations. I've also included part of a place-mat in there that says, "This symbol means caution...slow moving farm vehicle."

The largest number of claims going to Ontario mutual insurance is related to farm vehicles being struck on the highway by other vehicles. The reason they're being struck is that the general public doesn't appreciate the slowness of the farm vehicles. They're not appreciating the sign when they see it, because they see it everywhere else being misused on slow-moving trees and slow-moving mailboxes and so on. What we would like to see is that misuse limited.

Some of you perhaps the last time around saw some of the uses of the sign that have been made over the province. People are continuing to use them and misuse them. We would like to see that come to an end, and we are prepared as a safety association to work along with developing this awareness program that this sign is a life sign. It can save the lives of the people who are operating the equipment on the roadway and it can save the lives of the general public out there who don't appreciate the farm machinery that is on the road.

We know there's a lot more happening out there than is highlighted in the number of deaths that occur. There are lots of accidents out there with farm machinery. There are lots of people running the equipment off the roadway because the person following in the Trans Am didn't identify that vehicle as a slow-moving vehicle and appreciate the difference in the closure time.

We had recommendations in the past from the Ontario Task Force on Health and Safety in Agriculture, and the province recommended that the Highway Traffic Act be reviewed and that every 10 years thereafter it be reviewed as to the meaning of the signs and the meaning of legislation as it applies to the farm vehicles on the roadway. We've had juries in the past where there have been fatalities recommend that the legislation be clarified and that a means of making that information known to the public be undertaken. The task force on health and safety, again, recommended that things be reviewed.

The need for awareness has been identified by the enforcement agencies out there. We have a police officer who approached the safety association and wanted to make a video that would highlight proper use of the sign on the vehicles on the roadway and highlight proper handling and so on. There's a lot of potential out there for accident and injury, and we would like to see the sign made something that is meaningful.

We're prepared to entertain any questions at this time.

Mr Villeneuve: Well, I certainly agree with you. The slow-moving trees you refer to can be very confusing, and certainly since the initial meeting I've been kind of watching. I think we're having less misuse, and it's very important when this legislation comes in.

My concerns remains, I guess we should never see a slow-moving sign on a road like 401.

Mr Andrews: No. Thanks to legislation that was passed fairly recently by MTO, farm vehicles are not allowed on the 401.

Mr Villeneuve: Except in certain—

Mr Andrews: No.

Mr Villeneuve: Are there not any—

Mr Andrews: No exemptions now.

Mr Villeneuve: No exceptions?

Mr Andrews: No exemptions. You can check that with Paul later, but that was my understanding.

1620

Mr Villeneuve: My concern remains that I guess as a farmer I would want a slow-moving-vehicle sign on two grain boxes that are maybe bolted to the back of a flatbed.

There may be instances there where you may be going 50 clicks an hour. In the field you certainly wouldn't, but on the highway you may get going. If you're coming home late at night and you've emptied at the elevator, you may be going 50 clicks an hour. I don't think that should warrant the penalty of a \$90 fine. Could you comment on that?

Mr Andrews: I suppose that's similar to all of us who drove here today. Some of us drove 10 kilometres over the speed limit and we're here without having any tickets or without having to pay out any dollars. Now, maybe six months from now—

Mr Villeneuve: I can tell you where the photo-radar was this morning coming in.

Mr Andrews: —I'll be getting that thing in the mail. Jim drove today, I should add.

For the most part, on most farm machinery, the tires are rated on them not to be driven over 25 miles an hour.

Mr Villeneuve: Miles or clicks?

Mr Andrews: Well, it's been miles in the past because that was the—

Mr Villeneuve: Standard.

Mr Andrews: —criterion, yes. But I don't see a lot of problems in the area that I service, which includes Niagara. There are a lot of converted vehicles in the area, and they're very capable of going over that speed, but the reason they've chosen to cut that vehicle down and use it for a specific use is so they can use it without having to pay taxes on the gasoline and safety of the equipment and so on.

Mr Villeneuve: So this is an unlicensed vehicle.

Mr Andrews: This is an unlicensed vehicle. If it has the SMV sign on it, it's converted for a specific use. Certainly a lot of them may be capable of going faster, but I wouldn't personally want to travel at a higher speed

with a lot of this equipment, particularly when it's loaded.

Mr Villeneuve: Yes, but like I'm telling you, when you're coming back from the grain elevator, it's midnight and you don't have a load on, you may be going 50 or 60 clicks an hour with a standard flatbed farm truck, licensed with a farm vehicle on it. I would hope those people would not be charged.

Mr Andrews: You're talking about a permanent conversion.

Mr Villeneuve: I'm talking about, you know, you may bolt those grain boxes on for the harvest time and then after harvest you've just got a flatbed.

Mr Andrews: I'd suggest that in that case perhaps the definition would be that it's not a completely converted vehicle and that someone might want to check with the police on that situation.

Mr Villeneuve: That's the only grey area.

Mr Andrews: It's supposed to be converted for a specific use and not be able to be used for something else later on.

Mr Villeneuve: But if it is a farm-licensed vehicle, with the farm plate on it—

Mr Andrews: Then you wouldn't require the SMV sign, because the SMV sign is not to be on licensed vehicles, as I understand it.

Mr Villeneuve: All right. That clarifies it for me.

Mr Hayes: I really don't have a question, I have a comment to make, and I want to thank you for the work and support in helping us with this bill. But I found it very interesting. I was telling the committee that this has been a bill that the Farm Safety Association and other farm organizations have been trying to get in for 15 years. Joe, as a matter of fact, showed me this clipping. It's from the Brantford Expositor on May 20, 1965, and it shows where:

"Brant County Farm Safety Council recommends slow-moving vehicles (SMV) display the new SMV emblem to avoid rear-end highway collisions. Charles E. Misener, of RR 8, Brantford"—who was the president of the county association—"mounted the first safety triangle in the area on his tractor. The bright reflector is a product of research conducted at the Ohio State University, and is now compulsory in Manitoba and may soon be adopted by the Ontario Department of Transport. It is recommended by the National Safety League of Canada and is available in Brant through the Brant County Junior Farmers' Association." They were busy back then too.

Actually, it's almost 30 years. We're saying that 30 years ago, here was a sign that pretty well everybody who was involved in transportation and in the farming community felt was the sign that should be used, and we're glad to have it here.

Mr Paul Klopp (Huron): Thank you for your time and for some of your clarification. Maybe just for the record, it's my understanding that any vehicle that goes over 40 kilometres an hour at any time, you're not supposed to have a slow-moving-vehicle sign on it, period, if it's a licensed vehicle?

Mr Andrews: That would be the proposed legislation, that the speed limit is attached to the sign. If you put the sign on the vehicle, then that limits your speed, even though you're capable of going more.

Mr Klopp: All right. Thank you for that. Also, under this proposed bill we're not changing the amendments with regard to unlicensed versus licensed? We're not changing that in the act? Because in your questionnaire, which I happened to answer all right, "Under the Highway Traffic Act, a farm wagon remains a farm wagon regardless of the towing vehicle." We're not changing that; we're not making amendments to that. Is that your understanding?

Interjection: Yes.

Mr Klopp: Okay.

Mr Andrews: There was at one time an interpretation a few years back that a farm wagon, when towed behind a tractor, was a farm wagon. If you towed it behind a pickup truck, then it became a trailer. The ministry is saying the interpretation is that a farm wagon is a farm wagon.

Mr Klopp: And that's still staying under this act.

Mr Andrews: There are no changes that I can interpret in that.

Mr Klopp: Okay, good. Neither have I, so that covers that.

Mr Hansen: I think Mr Andrews was talking about down in the Niagara area with orchard wagons. We have quite a few of them running around.

I've got to commend Mr Hayes for bringing this bill forward. It came before the government rural-agricultural caucus about three years ago and was discussed at that point.

There's only one thing: It would be nice that it became law that any piece of equipment that would be going out on the road that already had on the slow-moving sign, when that was sold, that would be on. Maybe that's one step further. Maybe Mr Cooper or Mr Villeneuve can come out with a private member's bill to have each vehicle have it on, because sometimes you say, "I'm going to get one next week for that vehicle." Any comment on that?

Mr Andrews: One of the discussions we've had around the table at the Farm Safety Association is that when this sign is put out for marketing, there be something on the back of that sign that says it's only for a specific use, on vehicles that are travelling less than 25 kilometres an hour. That would help with those people who are going to buy it to misuse it. Certainly once it becomes a law and it starts to get respect, perhaps we can convince the Ontario Retail Farm Equipment Dealers' Association to make contact with the manufacturers with regard to making that sign a permanent fixture on the vehicles.

Mr Hansen: To donate it.

Mr Andrews: Yes.

Mr Daigeler: My question, and you must excuse me, is a question from an urban member who doesn't have too many slow-moving vehicles in his riding, at least not

farm vehicles. Certainly if our Agriculture critic were here, he wouldn't ask this question, but unfortunately his health is a little bit not too good right now. I hope he'll be back soon. He'd be very interested, certainly, to participate in this and to support it.

My question is, where do you get that sign currently? Is it sold at Canadian Tire or—

Mr Andrews: Oh, yes. It's widely available in TSC Stores, United Cooperatives of Ontario, Canadian Tire. It's readily available.

Mr Daigeler: I see. So you could just go to the store and pick it up, and I presume that will continue to be the practice.

You indicated already you would wish that perhaps something is going to be attached to that sign. Have you got any plans to get in touch with the producer? I don't know who produces it. I have no idea.

Mr Andrews: There are probably one or two makers of the signs within the province, and that wouldn't be a problem whatsoever. We've been approached by them for alternative use of the materials that they have left over in the past, and we didn't feel that any signs should be produced that would demean the meaning of the SMV sign. So no, the sign is readily available, will continue to be and, possibly as a result of our awareness campaign that we would develop, more people would be aware of what it is, where it is and how to get it and how to use it.

1630

Mr Daigeler: I don't know whether you have this kind of information—perhaps it would have been a better question to the ministry official—but are there any kind of actual statistics in terms of how many slow-moving vehicles were involved in accidents over, say, the last 10 years or something like this? I mean, what are we talking about?

Mr Andrews: One of the difficulties in the past has been the identification of the vehicles on the roadway as farm vehicles. In the past, the identification in the ministry's statistics has been one word: tractor. If the vehicle that had the accident was recognized as a farm vehicle, readily recognized, then it would be identified as in the statistics. But there are a lot of accidents out there where we know, from discussions and meetings that we attend, where people have had accidents but they've never been reported, or the tractor is run off the road by the car that was coming so fast that he knew he had a choice: Go in the ditch or get struck by the car.

In terms of fatalities, I would guesstimate that we've had perhaps two to three fatalities a year over the last number of years. We certainly identified them in our statistics.

Mr Daigeler: Due to the speed differential?

Mr Andrews: Yes, due to tractors being run into on the roadway or due to the person going so close to the shoulder of the road to make room for that other vehicle that's coming by that they end up flipping the tractor or going down into the ditch. But it's the leading cause of costs and claims for the Ontario Mutual Insurance Association. It's been consistent over the years—it's over \$7 million a year now—the claims that they pay as a

result of vehicles on the roadway being struck.

Mr Daigeler: That's an interesting figure.

Mr Andrews: There's a lot more happening out there than some of us would think.

Mr Daigeler: Frankly, I am surprised. I must admit that, coming from Nepean, I'm not involved with this, but I did not expect it, first of all, to be two or three fatalities a year, and, secondly, \$7 million. That's a considerable number.

Mr Andrews: If we went to Statistics Canada, we would probably find that there are more fatalities, because invariably people are injured in the roadway accident and then, if they die months later or something like that, we may not hear about it through clippings and through other information. But what we're talking about here is not just the safety of the 3% that represents agriculture; we're talking about the 6,600,000-plus drivers in Ontario, plus those who are visiting.

I would add that this is similar legislation to probably at least 29 of the states in the United States—the misuse law, the speed limit. Also, I have a pamphlet here on Amish country, and it shows that in the States they're using the SMV sign down there now. I don't know if it's the same sect, but that's perhaps something we can discuss.

This is not something new to Ontario, or just Ontario's idea. The member Pat Hayes mentioned the SMV sign in 1965 going on the tractor in Brent county. At that time, Manitoba already had a law for the SMV sign. It took several years before Ontario—I believe it was 1968 when the law came in in Ontario, so we've been a long time with the sign. But how many of us had our licence before 1968?

The Chair: On behalf of this committee, I'd like to thank you, Mr Andrews and Mr Gibb, for bringing—

Mr Jordan: Sorry, Mr Chairman, I just want a quick question. What is the proper colouring for this sign?

Mr Andrews: Yellow-orange.

Mr Jordan: So the other ones that you see that are other colours—

Mr Andrews: They fade after a few years, depending on their exposure to weather. There's a standard that they must uphold for a certain period of time, but they do fade and they turn yellow. We've been advocating that those yellow ones be replaced because that centre portion is the daytime, and that's when most of the accidents happen, in daytime, good lighting conditions and good road conditions. But that's also when the people are driving fast too.

The Chair: Once again, Mr Andrews and Mr Gibb, on behalf of this committee I'd like to thank you for taking the time out of your busy schedules and giving us your presentation today.

ONTARIO FEDERATION OF AGRICULTURE

The Chair: I'd like to call forward our next presenters, from the Ontario Federation of Agriculture. Good afternoon.

Mr Ken Kelly: My name is Ken Kelly. I'm second vice-president of the Ontario Federation of Agriculture,

and with me is Peter Jeffery from our research department.

The Chair: I understand congratulations are in order for your re-election as second vice-president.

Mr Kelly: Thank you very much, sir.

On behalf of the 38,000 farm members and the 28 organizations that make up and form the Ontario Federation of Agriculture, I'm very pleased to be here and welcome this opportunity to address the resources development committee on Bill 176, the Highway Traffic Amendment Act (Slow Moving Vehicle Signs).

As has been mentioned by a number of people here today, this issue goes back to the mid-1970s and before. Not only is the issue about slow-moving-vehicle signs; I think the whole issue is slow-moving itself. Quite frankly, this issue has outlasted three parties in power and numerous governments. I'm very happy to see that this slow-moving issue has actually finally come nose to nose with a faster-moving member.

Having said that, the Ontario Federation of Agriculture fully supports Bill 176. If I might, I'll just search through some of the things that we have here in front of you. We did bring some bedtime reading for you.

The Highway Traffic Act requires every farm tractor, self-propelled farm implement or vehicle towed by them to display the slow-moving-vehicle sign when operated along a highway. While its distinctive triangular yellow, orange and dark red sign must be displayed on all farm vehicles when operated on a highway, there are no corresponding penalties to deal with its misuse.

The intention of the sign is to alert motorists on rural roads that they are overtaking farm machinery travelling at a speed much below the posted limit, and this is not only for the protection, of course, of the people who are farming and operating these vehicles on those roads, but for our urban cousins when they come out into the countryside and come across vehicles that travel at speeds and in manners that they're not used to. The rapid closing time on these situations can lead to serious accidents.

Public awareness of the proper meaning and purpose of this sign is therefore eroded by misuse. In parts of Ontario, a slow-moving-vehicle sign is widely used to mark lanes and mailboxes. We've received reports of most slow-moving-vehicle signs on vehicles that are not slow moving within the intention of the act, and also on hydro towers and other stationary objects. Many and varied abuses of the sign lead to confusion for motorists travelling on the highways of rural Ontario.

Slow-moving-vehicle sign misuse is not unique to Ontario. The slow-moving-vehicle sign is recognized across both Canada and the United States as the identifier for slow-moving farm vehicles. In order to address misuse, a number of American jurisdictions have enacted misuse laws combined with speed limits.

We are concerned, however, that there may be some ambiguity in the wording of the act in its application of a speed limit to slow-moving vehicles. Paragraphs 76(2)1 and 2 define what are slow-moving vehicles. Paragraph 1 refers to "tractors and self-propelled implements of husbandry". Paragraph 2 refers to "vehicles (other than

bicycles, motor-assisted bicycles and disabled motor vehicles in tow) that are not capable of attaining and sustaining a speed greater than 40 kilometres"—or 25 miles—"per hour on level ground when operated on a highway." Does this mean that farm tractors and self-propelled implements of husbandry are not restricted to a 40-kilometres-per-hour speed limit, or does it mean that they are?

1640

We recommend that the slow-moving-vehicle sign be limited in its usage to farm vehicles. The more uses for the slow-moving-vehicle sign, the more problems of correct awareness it will create for the travelling public. Simplicity of use will heighten awareness.

Finally, we would encourage the Ministry of Transportation to undertake a broad-based public education program on the use of the slow-moving-vehicle sign. Such an education program should not be limited to rural Ontario but be directed at all licensed drivers in Ontario.

In past briefs to cabinets, the OFA has recommended that the Highway Traffic Act and regulations be amended to restrict the use of the slow-moving-vehicle sign solely to those farm vehicles travelling at a speed of less than 40 kilometres per hour. We further recommended that such amendments include a prohibition against the misuse of the sign and penalties sufficient to deter misuse. We urge the Ontario Legislature to rectify the problems inherent, due to widespread misuse, and swiftly pass Bill 176, the Highway Traffic Amendment Act (Slow Moving Vehicle Signs), 1994. We'd be pleased to deal with any questions you might have.

Mr Hansen: I was going to just make some comments. Mr Daigeler was talking earlier about statistics. Wiley Farms: Mr Villeneuve knows them quite well; Noble was down there for a farm visit. They were on a road up near Guelph delivering juices. There was a pole that had an identified triangle on it. A woman braked quite quickly to avoid hitting what she thought was a farm wagon sticking out on the road and went into a spin.

They were behind them in the truck, were able to stop in time without injuring the woman, but in the course of that close accident, some of the juices in the bottles shifted. Some of the cases broke, and they were the top cases and actually ruined the load that they were carrying. That would never show up as a statistic, but they would have to go back to the plant and repack all those cases, which was a day lost by Wiley Brothers on delivery.

We don't always see the total cost involved, but there are a lot of cases out there. I just wanted to bring that to light because the close calls never get counted, but there are a lot of them out there.

Mr Klopp: Thank you for your brief and reminding us about trying to get this ahead. You were here a little earlier and, I think, heard Ontario Hydro concerned about its signs. You've had experience with Ontario Hydro a little bit, I think, over the years. Don't you think it's kind of odd that Ontario Hydro is borrowing something from us and has the nerve to question us? My experience is, if we would ever touch anything that's under their regula-

tions, they'd have the power of Mohammed Ali on our heads as farmers. What do you think about their argument with regard to their using our sign and then their demanding that we work with them like this? What's your feeling?

Mr Kelly: Well, Mr Klopp, I'm a farmer by profession, not a politician. I might well just maybe share a commonsense viewpoint on it. I noticed that in Ontario Hydro's letter they mention that they might well have as many as 1,000 of these slow-moving-vehicle signs being misused across the province. The last time I'd bought one of these, it cost me \$4.95 down at the local co-op. I would suggest that the total cost is in the neighbourhood of somewhere around \$5,000, a tremendous capital expropriation that pales by comparison to rainforests in Guatemala or power companies in Peru. I think there's smoke, I think there's mirrors and I think this does not need to be an issue.

Mr Hayes: Thank you very much, Ken, I appreciate your support. On that one concern you had in your brief that there are no corresponding penalties to deal with the misuse, however, there are because it falls under the Highway Traffic Act and it's section 214. It states that, "Every person who contravenes this act or any regulation is guilty of an offence and on conviction, where a penalty for the contravention is not otherwise provided for herein, is liable to a fine of not less than \$60 and not more than \$500." So it is in there. That'll become part of the act.

Mr Kelly: I appreciate hearing that, Mr Hayes, because we don't need toothless laws; we need good laws when farmers' lives are at stake.

Mr Daigeler: It's not really a question to you, but a question that arises from your presentation. I don't know whether Mr Hayes perhaps can answer that. There was a question in Mr Kelly's presentation. It was asking whether tractors and self-propelled implements of husbandry can drive faster, at speeds greater than 40 kilometres. What's the answer to that point?

Mr Kelly: I'm sorry, I had my attention diverted for a moment.

Mr Daigeler: As I say, the question is not really to you, but you were asking in your brief whether tractors can go at speeds higher than 40 kilometres.

Mr Kelly: I think there are a number of issues around this, and we have had some discussions with MTO and with the Solicitor General's office regarding some of these issues. But it would appear to me that there are a number of vehicles that are being used that are, I think according to the words of the act, designed, manufactured, redesigned or altered for specific use in agriculture, that are quite capable of going more than 25 miles an hour, 40 kilometres per hour.

I guess the analogy I would use is that I came down here in a car. According to the speedometer, it's capable of doing 140 kilometres per hour. My son tells me it will, but I wouldn't know. However, the onus is on the operator to respect the privilege that he's been given to operate. If he wants to go beyond a prescribed speed limit, there are penalties. He runs the risk of paying the price. If he wants to conform to that speed limit, and to

that responsibility or that privilege he's been granted, then he should have no fear.

I'm not sure if I've answered your question. Maybe I'm getting as political as Paul in my old age.

Mr Daigeler: You've got the answer yourself, because you were asking in your brief, does this mean that farm tractors and self-propelled implements of husbandry are not restricted to a 40-kilometre-per-hour speed limit?

Mr Kelly: What we're saying in our brief is that it was not clear, in our reading of the act, whether there was to be a speed limit put in place with the use of the slow-moving-vehicle sign. That was not clear to me when I read it. I've heard some testimony here today. I've heard some assurances here today. If there is a speed limit at all, go with it at 25 miles per hour, 40 kilometres. I think we can support that. We've supported that for a number of years in our organization.

We asked this question in this manner for the purpose of ensuring that when it gets third reading it's very, very clear that there are prescribed penalties for going more than 25 miles an hour or more than 40 kilometres. The information we had at the last meeting between ourselves, MTO and the Solicitor General's office is that there is no speed limit presently attached to the slow-moving vehicle sign. That was their interpretation. Our fear is that they may well be right.

The Vice-Chair (Mr Paul Klopp): If I could be helpful, did you want to comment on that, Mr Hayes?

Mr Hayes: No, I think I already have. It is in the act, and if you want a clarification, maybe it would be better that I ask—

Mr Daigeler: We'll come back to it.

Mr Hayes: Perhaps Mr Levine would come up and represent the ministry.

The Vice-Chair: Any further questions?

Mr Kelly: Just for clarification, and I maybe talk too much, but it's not clear that when we read this particular act there is a speed limit. For years, we've supported a speed limit.

Mr Daigeler: Is there a speed limit?

Mr Levine: It's a matter of interpretation, and in this case the interpretation that I would apply to it is the 40 kilometres per hour. If a vehicle is travelling at greater than 40 kilometres per hour, it should not have attached to it a slow-moving-vehicle sign.

Mr Daigeler: But there's no other provision that would prohibit that vehicle to go faster.

Mr Levine: No.

Mr Hayes: Maybe you could mention about the licence, whether it's licensed or not.

1650

Mr Levine: Okay. I'm not sure that the actual licensing issue comes into play here in terms of assigning any speed limitation. The choice does have to be made as to whether a vehicle is a farm tractor or implement of husbandry, but certainly that wouldn't be—the consideration that one has to make with respect to licensing is that if you choose to operate a vehicle unlicensed, you

must be able to justify that it's been redesigned or specifically designed for a specific use in farming. If you're able to do that, you can get away with not having that vehicle licensed and can still operate it on the road. I don't think you would find too many enforcement officers who would be too pleased to see a vehicle like that operating at regular speeds on the highway, trying to keep up with other traffic.

Mr Villeneuve: Just for clarification, you emphasize slow-moving farm vehicles. Are you saying that slow-moving signs should be attached to only farm vehicles?

Mr Kelly: I think the sense we have of it is that the fewer things they're used on, the less confusion there's going to be in the minds of the travelling public. So we tend, from the federation point of view, to look at the issue of slow-moving-vehicle signs as things that we put on farm vehicles, farm equipment, farm machinery. I think we would want to suggest that that's where the slow-moving-vehicle sign belongs, and nowhere else.

Mr Villeneuve: In other words, a backhoe that may or may not be used on a farm, construction equipment—

Mr Kelly: I think that's a moot point. I think a tractor is a tractor, whether it's used to haul a backhoe around or used to haul a bailer around.

Mr Villeneuve: But a backhoe driving down the highway you feel should not have a slow-moving sign on it.

Mr Kelly: I would consider that it's similar to a self-propelled vehicle of husbandry, yes. You got me on that, Noble, and I would agree with you.

Mr Villeneuve: Anyway, Ken and Peter, thank you. Back in the mid-1960s I was reporting for the farm safety association for my county and I was surprised for the several years that I did that how many accidents we had. We were reporting everything from a twisted ankle to death. It's a very dangerous business, and this certainly would alleviate some of the problems that we have on our highways.

The Chair: Mr Kelly and Mr Jeffery, on behalf of this committee I'd like to thank you very much for taking the time out of your busy schedules and bringing your presentation to this committee today.

Mr Kelly: On behalf of the OFA, we want to thank you for allowing us to be here. We hope this bill can move along very swiftly to its full accomplishment.

The Chair: I once again call forward the Ministry of Transportation.

Mr Daigeler: Just to finalize this, and again it just shows my ignorance about rural affairs, I guess, to have to admit, but is there a provision that tractors are not allowed to go faster than 40 kilometres?

Mr Levine: No.

Mr Daigeler: So they could go any speed, but they would be in contravention, obviously, to put on that sign. If they don't have that sign on, they can go any speed they wish, within the posted speed limit?

Mr Levine: Within their capability as well. There should be some recognition given to the fact that I don't think too many farm tractors can sustain a relatively high

speed. Higher than 40, perhaps, but—

Mr Villeneuve: Not much more.

Mr Levine: Not much more.

Mr Villeneuve: Not unless they're those guys who are in the pulling competitions.

Mr Daigeler: Really, then, the answer to the specific question that was in this brief, "Does this mean that farm tractors are not restricted to a 40-kilometre-per-hour speed limit?" is yes.

Mr Levine: The way the legislation is worded, we have identified the farm vehicles separately from the other vehicles that we talk about being capable of maintaining 40-kilometre-per-hour speed but, combined, this does in fact imply that if it is a farm vehicle, in order to use the slow-moving-vehicle sign, it still must remain at a speed lower than 40 kilometres per hour.

The Chair: Mrs Fawcett.

Mr Daigeler: I do have another question, but—

The Chair: Oh, go ahead. We'll just open it up now.

Mr Hansen: We'll take you in the rural caucus after this.

Mr Daigeler: We'll see whether you want to answer the question or not, but when we spoke on second reading, certainly all the representatives of my party, and Mrs Fawcett in particular, were very supportive of this idea. At the same time, there are of course many other private member's bills before the House. I see Mr Hansen here. He has one before the House that frankly I'd be very supportive of as well. I'm just wondering, was the ministry involved at all in prioritizing which private member's bills would get discussed still now? In particular, why is it that Mr Hansen's bill regarding the shared shippers—

Mr Levine: I'm not in a position to answer that question.

Mr Daigeler: —and truckers doesn't get the floor, whereas this particular bill does?

Mr Klopp: This is not a relevant question.

Mr Daigeler: I'd just like to know from the ministry—

Mr Hansen: On a point of clarification—

The Chair: Order.

Mr Daigeler: Just a minute. I have the floor. You can speak afterwards.

Mr Hansen: On a point of order, Mr Chair: That is not a relevant question.

The Chair: There is no point of—one moment. He did say he didn't know whether the ministry would want to respond. I will respond if the ministry chooses not to.

Mr Daigeler: Mr Chair, I would appreciate it if you could continue to let me have the floor when you gave it to me.

The Chair: You have the floor, Mr Daigeler.

Mr Daigeler: I would like to know from you, from a ministry perspective—and I understand that you do represent the Ministry of Transportation today, since I don't know who else speaks for the Ministry of Transpor-

tation today here—what, from the Ministry of Transportation, has been done with regard to the other private member's bills that also affect the transportation sector.

Mr Levine: As we are aware of private member's bills, we are called upon to analyse or contribute our own analysis, but in terms of priorities or anything that has to do with decisions as to which bills would move forward or not, we have no role to play in that at all, to my knowledge.

The Chair: If I may respond, Mr Hayes's bill was referred to this committee, and being that there is no government legislation which would take priority, that's why this bill was called forward to go to committee.

Mr Daigeler: That wasn't my question. We'll get an opportunity to ask that again later on. Thank you, Mr Chair.

Mr Hayes: Just in response, what has happened here is, yes, this bill was sped up, and it was sped up with the cooperation of all three parties. I talked to the critics in the other parties and they agreed, especially in the subcommittee, really, I should say, that this was a very important bill and it concerned safety and we all agreed unanimously that the bill be brought forward. That's why it's here.

The Chair: Thank you. On the same subject?

Mr Hansen: On the same subject, my particular bill had first reading only. My ballot time will come up at the end of March or April, so that's why it hasn't gone forward to a committee as yet. It was just on the wrong end of the docket.

Mrs Joan M. Fawcett (Northumberland): I'm wondering, and I meant to take time to do a little research but I didn't, so maybe you can answer the question for me: Is it mandatory that slow-moving vehicles also have their flashing lights on, or is that just something people do?

Mr Levine: It isn't, because as a matter of fact not all slow-moving vehicles would have any flashing lights.

Mrs Fawcett: All right. That's what I thought.

Mr Levine: Many farm vehicles don't have any electrical equipment.

Mr Villeneuve: What about after dark? After dark they have to.

1700

Mr Levine: They have to have some. Some of the horse-drawn vehicles, however, would be carrying kerosene lamps, for example, so there wouldn't necessarily be flashing lights to turn on.

Mrs Fawcett: As far as safety goes, where possible I'm sure the farmers do, but certainly with today's traffic it would—and I'm thinking now of hilly Northumberland, when you come up over a hill and suddenly there is a slow-moving vehicle in front of you. Maybe at certain times of the day it would really help out as well if the vehicle had flashing lights, but I can see where not all vehicles do, so that's another debate for another day, I guess.

The Chair: Further questions from the PC caucus? No? Mr Hayes? Mr Klopp?

Mr Klopp: Just back to that 40 kilometres—and it's too bad we got off on another topic, but that's the decision of the Chair. And I think we're splitting hairs. As a farmer, I know most tractors don't go over 25 kilometres an hour, but I also tried to follow a combine the other day that was doing about 30. I certainly know it's not an intent of this organization, who I think and I hope all want to pass it—I certainly do. But I don't think we want to get bottlenecked when we're actually, after all these years, finally getting this done, that we don't accidentally pass a bill today which, because it says 40 kilometres an hour, somebody out there, be it a police officer who has a bad hair day or something, decides to go after a farmer by picking a rule and says: "Well, that combine was doing"—I'll stick with kilometres—"45 kilometres an hour. You've got a slow-moving-vehicle sign in the back. I'm charging you because you should have had that sign off because this vehicle is doing 45 kilometres an hour."

I think we just need that clarified, that all farm vehicles, whether it be husbandry vehicles or whatever, are supposed to have a slow-moving-vehicle sign on and whatever speed they're going at any time is not the point here, that they're farm vehicles, if we could just have that clarified. I think that's what we were doing here, but I want that clarified that they're farm vehicles and we're not talking about the speed issue in the context that I think I heard some people talk about here. As long as it's clear in your mind's eye, then let's get on with it.

I'll put it to you in a question. If I have a combine that does 45 kilometres an hour—and I'm positive the other day that's what that combine was doing—and they've got a slow-moving-vehicle sign on, under this legislation are they going to demand that the slow-moving-vehicle sign comes off that combine because they're going over 40 kilometres an hour?

Mr Levine: If the combine is going 45 kilometres an hour and has the slow-moving-vehicle sign on, subject to the interpretation of an enforcement officer, I would think a charge could be laid.

Mr Klopp: We don't want that, I don't think.

Interjections.

Mr Hansen: When are you going to drive a combine at 45 kilometres an hour?

Mr Klopp: Okay. As long as you're happy with that, then let's pass it.

Interjections.

Mr Hansen: I've got no questions.

The Chair: Any further questions? Seeing no further questions from the committee members, I'd like to thank the Ministry of Transportation for their presentation to this committee. Legislative research now.

Mr Jerry Richmond: I was chatting with the Chairman. I do have a summary. Our job today is very easy because we've only had three deputations, compared to some six-week marathons that we've all worked with across the province with various other committees.

What I undertook with the Chairman is to get the members a written copy later in the week. However, very simply, the summary I have prepared does reflect the

support for the bill by the Ministry of Transportation and also the two deputations from the farm community that came before us. It also reflects the Ministry of Transportation's concern with regard to the regulation-making power, and I think MOT's concerns are reflected in the government amendment that I've seen. I don't know whether either of the two opposition parties will be proposing further amendments. That's a matter for the parties and the committee to consider.

The other point the summary does reflect, in addition to the support from the three deputations, is the—

Mr Daigeler: What summary are you talking about?

Mr Richmond: I'm just saying I'm going to get you one later in the week. I'm just verbally highlighting what will be in there, because time is of the essence here and I understand we are going to be going into clause-by-clause. So I'm just verbally highlighting what will be in the summary. I will, Mr Daigeler, get you and the other members a written copy later in the week that you can refer to, and it will follow the usual format of these summaries. I'm sure you've seen many of them.

The other concern that the summary reflects is the concern of the OFA, where on page 2 of their deputation they recommend that the SMV sign be limited in its usage to farm vehicles.

That really concludes what I have to say. So you will get a written summary in due course.

The Chair: There seems to be a fair bit of discussion going on, so if I could, we'll have a five-minute recess before we proceed with clause-by-clause analysis. This committee stands recessed for five minutes.

The committee recessed from 1706 to 1714.

The Chair: I'd like to call this committee back to order. If we may, could Mr Levine from the Ministry of Transportation come back and clarify one small matter?

Mr Levine: I return humbly to the table. With respect to the question of whether a farm vehicle must adhere to a 40-kilometre speed in order to still retain the slow-moving-vehicle sign, I was incorrect in my previous answer. In fact, all farm tractors and self-propelled implements of husbandry are defined as slow-moving vehicles, which must carry the sign. The further definition relates to all other vehicles that are not capable of attaining and sustaining a speed of greater than 40 kilometres per hour. So the combine, being a self-propelled implement of husbandry, would retain the privilege or the requirement to use the slow-moving-vehicle sign even if it were capable of travelling at a higher speed.

The Chair: Thank you. The committee appreciates that clarification.

Mr Daigeler: Could I ask you, is that the Highway Traffic Act? Where is that definition?

Mr Levine: In this bill, it is section 1 of the bill, subsection 76(2) of the Highway Traffic Act.

Mr Daigeler: You mean to say that with this bill now, all tractors are automatically defined as slow-moving vehicles? Does that have then any—

Mr Levine: That's no different than the current law.

Mr Daigeler: So they are already presently defined as slow-moving vehicles? That was my question.

Mr Levine: Yes.

The Chair: If we can, we'll proceed with the clause-by-clause analysis.

On section 1—

Mr Daigeler: I just wanted to say that I thought Mr Hansen earlier on, even though some of the members didn't want me to ask the question, gave a good answer, because I think he's right, and I forgot about that, that his bill received only first reading whereas Mr Hayes's bill got a whole hour of discussion and the support from all three sides of the House. So I think that's a legitimate reason why his should get the priority over Mr Hansen's, but I do hope Mr Hansen's bill will, in some form or other, still see the light of day as well, maybe as a government bill.

Mr Hansen: I wasn't able to talk my colleagues into giving up their spot for their particular important bill to let me in for my important bill.

Mr Daigeler: I'll put in a push for you.

The Chair: We have a motion by Mr Hayes.

Mr Hayes: Do you want me to do the amendment now or wait till we get—

The Chair: We're on section 1.

Mr Hayes: I move that subsection 76(7) of the Highway Traffic Act, as set out in section 1 of the bill, be amended by adding the following clauses:

“(c) prescribing the type and specifications of a marker or device, requiring that it be displayed, instead of the slow-moving-vehicle sign, on a horse-drawn vehicle when driven by a person described in clause (b), and prescribing the location of the marker or device on the vehicle;

“(d) respecting any matter considered necessary or advisable to carry out the intent and purpose of this section.”

I think it's straightforward. I appreciate everyone's support.

The Chair: Any further discussion on the motion by Mr Hayes? Seeing no further discussion on the motion by Mr Hayes, all those in favour? Opposed? Carried.

Further discussion on section 1?

Seeing no further discussion on section 1, shall section 1, as amended, carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry?

Mr Daigeler: Normally, we have questions and comments or something like that. Before we pass number 3, because this pretty well concludes the matter, I think it is in order to congratulate Mr Hayes on having brought this matter forward.

Mr Hansen: “Do we want to report it to the House?” first.

Mr Daigeler: Even though it was a short hearing session before the committee, at least we did get an opportunity to hear from some of the affected parties, which I think was useful as well, and I think somebody did their homework and advise them. So that is to the credit of whoever did it; I guess Mr Hayes did it.

I just want to again indicate the support, certainly, of the Liberal Party, as was indicated already when the matter was brought forward during private members' hour. Mr Eddy spoke; Mrs Fawcett and Mr Cleary as well. They all took part in the debate and expressed their support for this initiative. So even though they can't be here today, as Transportation critic, and in that sense perhaps least affected by it, I certainly add my support for this as well.

Mr Len Wood (Cochrane North): I'd just like to add the comment that I'm pleased that Mr Hayes has been able to gain the support of the other two caucuses as well as the Farm Safety Association and the Ontario Federation of Agriculture, and I'm looking forward to this bill coming in for third reading.

The Chair: Mrs Haslam.

Mrs Karen Haslam (Perth): I was just afraid that Mr Hayes was getting a swelled head and I was going to say something derogatory, but there's just nothing derogatory I can say about Mr Hayes at this time.

Mr Klopp: On behalf of the Ministry of Agriculture, Food and Rural Affairs, it's an issue that's been around there a long time over the years and we're just really glad that Mr Hayes took the initiative in his private member's bill to bring this forward because of tight schedules and that. We're really pleased that this is getting forward for the farm community. There are people in my riding who have been working on this for years. They're going to be quite happy that this got through and survived one government anyway. So let's pass it and get on with it.

The Chair: Shall section 3 carry? Carried.

Shall the preamble carry?

Interjections: Carried.

Interjection: There is no preamble.

The Chair: Oh, there is no preamble. My mistake.

Shall the title carry? Agreed.

Shall the bill, as amended, carry? Carried.

Shall I report the bill to the House? Agreed.

One further piece of business: There is a document that was handed out to all the committee members, which is the Ministry of Labour's undertakings given during the standing committee on resources development on Bill 165. Being as this committee has already disposed of Bill 165, it will just be for the committee's reference.

Seeing no further business before this committee, this committee stands adjourned to the call of the Chair.

The committee adjourned at 1723.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

- ***Chair / Président:** Cooper, Mike (Kitchener-Wilmot ND)
- ***Vice-Chair / Vice-Président:** Wood, Len (Cochrane North/-Nord ND)
 - Conway, Sean G. (Renfrew North/-Nord L)
- *Fawcett, Joan M. (Northumberland L)
- *Jordan, Leo (Lanark-Renfrew PC)
- *Klopp, Paul (Huron ND)
- *Martel, Shelley, (Sudbury East/-Est ND)
 - Mills, Gordon (Durham East/-Est ND)
 - Murdock, Sharon (Sudbury ND)
 - Offer, Steven (Mississauga North/-Nord L)
 - Turnbull, David (York Mills PC)
 - Waters, Daniel (Muskoka-Georgian Bay ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

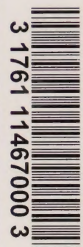
- Daigeler, Hans (Nepean L) for Mr Conway
- Hansen, Ron (Lincoln ND) for Ms Murdock
- Haslam, Karen (Perth ND) for Mr Mills
- Hayes, Pat (Essex-Kent ND) for Mr Waters
- Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC) for Mr Turnbull

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